













Marchmen's Resumption and  
Settlement of Estates

1848

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## CHAPTER I.

### CONSTITUTION AND JURISDICTION OF THE CIVIL COURTS.

#### SECTION I.

##### *Rules for the formation of the Code of Regulations.*

1. It is essential to the future prosperity of the British territories in Bengal, that all Regulations which may be passed by Government affecting in any respect the rights, persons, or property of their subjects, should be formed into a regular code, and printed with translations in the country languages; that the grounds on which each Regulation may be enacted should be prefixed to it; and that the Courts of justice should be bound to regulate their decisions by the rules and ordinances which those Regulations may contain. A code of Regulations framed upon the above principles will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends, and the mode of obtaining speedy redress against every infringement of them; the Courts of justice will be able to apply the Regulations according to their true intent and import; future administrations will have the means of judging how far Regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new Regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of the future decline or prosperity of these provinces will always be traceable in the code to their source. The Governor General in Council has accordingly enacted as follows.—*Reg. 41, 1793, Sect. 1.*

2. Every rule or order that may be passed by the Governor General in Council regarding the administration of justice; the imposition or levying of taxes, or of duties on commerce; the collection of the public revenue assessed upon the lands; the rights and tenures of the proprietors and cultivators of the soil; the provision of the Company's investment: the manufacture of salt or opium; and generally all Regulations affecting in any respect the rights, persons or property of the Natives, or any individuals who may be amenable to the Provincial courts of judicature, shall be recorded in the Judicial department, and there framed into a Regulation, and printed and published as hereafter directed.—*Reg. 41, 1793, Sect. 2.*

Rules and orders affecting the rights, persons or property, of the people, to be formed into regulations.

3. The Regulations passed annually shall be numbered. The first Regulation enacted in each year shall be numbered one, and all subsequent Regulations according to the order in which they may be passed. The number of each Regulation, and the year in which it may be enacted is to be inserted at the top of every page as in this Regulation.—*Reg. 41, 1793, Sect. 3.*

Regulations to be numbered, and the mode of numbering

A title to be prefixed to every regulation.

4. Every Regulation shall have a title, expressing the subject of it as concisely as possible, similar to the title prefixed to this Regulation.—*Reg. 41, 1793, Sect. 4.*

Regulations to have a preamble.

5. There shall be a preamble to every Regulation stating the reasons for the enactment of it.—*Reg. 41, 1793, Sect. 5, Cl. 1.*

Reasons for repealing or modifying former regulations to be detailed in preamble.

6. If any Regulation shall repeal or modify a former Regulation, the reasons for such repeal or modification, are to be detailed in the preamble.—*Reg. 41, 1793, Sect. 5, Cl. 2.*

Regulations to be divided into sections and numbered

7. Every Regulation is to be divided into sections. Each section shall be numbered according to the order in which it may occur. The preamble is to be considered as the first section. The sections, where necessary, may be divided into clauses; in which case, each clause is to be numbered in the same manner as the clauses in Section 5.—*Reg. 41, 1793, Sect. 6.*

References to clauses, sections, or regulations how to be made

8. In framing a Regulation, if there shall be occasion to refer to any clause or section of a Regulation, or any Regulation at large; as for example the second clause of the fifth section, or the fifth section of this Regulation, or this Regulation generally; the reference in each case shall be expressed in the following manner:—Clause 2, Section 5, Regulation 41, 1793. Section 5, Regulation 41, 1793. Regulation 41, 1793.—*Reg. 41, 1793, Sect. 7.*

Subject of every section, clause, or regulation to be inserted in the margin

9. The subject of every section and clause shall be inserted opposite to it in the margin as concisely as possible.—*Reg. 41, 1793, Sect. 8.*

Size of paper on which regulations are to be printed.

10. Every Regulation is to be printed on paper of the same size as the paper on which this Regulation is printed.—*Reg. 41, 1793, Sect. 9.*

Index to the regulations passed annually to be prepared.

11. At the expiration of each year, a copious Index to the Regulations passed during the course of it, shall be prepared and bound up with them.—*Reg. 41, 1793, Sect. 10.*

Superintendent of the press to retain one hundred copies of the regulations and the translates.

12. The Superintendent of the Company's press is to retain in his office one hundred copies of each of the Regulations that may be passed and printed annually, and the same number of copies of the translates of them in the Persian and the Bengal language. At the close of the year, after he has been furnished with the Index ordered to be prepared in the preceding section, he shall bind up the English printed copies of the Regulations, and the Persian and the Bengal translates, each in separate volumes. The remainder of the English copies of the Regulations, and the Persian and Bengal translates, are to be distributed as they are passed and printed in such proportions as the Governor General in Council may direct, amongst the Courts of justice, the Boards of Revenue and Trade, the Collectors of the land revenue and the customs, and the Commercial Residents and Salt Agents, or other public officers, or any individuals to whom it may be thought advisable to deliver copies.—*Reg. 41, 1793, Sect. 11.*

To bind up such copies and translates with the index.

Remaining copies how to be disposed of.

Ten of the English copies of regulations bound up with the index to be sent to the Ct. of Dns. annually.

Remaining ninety copies how to be disposed of.

13. Ten of the English copies of the Regulations passed annually, bound up with the Index as directed in Section 11, shall be transmitted to the Honourable Court of Directors by the two first ships that may be dispatched for England after the volumes are completed. Five copies are to be sent in each of the two ships. The remainder of the one hundred copies shall be distributed in such proportions as the Governor General in Council may

direct to the Courts of justice, the Boards of Revenue and Trade, the Collectors of the revenue, the Commercial Residents, and Salt Agents, or other public officers.—*Reg. 41, 1793, Sect. 12.*

14. The Civil and Criminal courts of justice are to be guided in their proceedings and decisions by the Regulations which may be framed and transmitted to them as above directed, and by no other.—*Reg. 41, 1793, Sect. 13.*

15. In the English drafts of Regulations, the same designations and terms are to be applied to the same descriptions of persons and things, in order that rights, property, tenures, privileges, deeds, courts, process, offices, officers, and generally all persons and things may be uniformly described by the same designations and terms throughout the judicial code.—*Reg. 41, 1793, Sect. 14.*

16. Every Regulation with the marginal notes shall be translated into the Persian and Bengal languages by the Persian translator to the Government, or such other person as the Governor General in Council may expressly appoint for that purpose. The number of the Regulation and the year in which it may be passed, and the numbers of the sections and clauses shall be inserted in the translates in the same manner as in the English drafts of the Regulations.—*Reg. 41, 1793, Sect. 15.*

17. The translator is to be particularly careful to preserve in the translates the same uniformity in the designations and terms applied to persons and things as is directed with regard to the English code in Section 14. Whenever he shall have occasion to insert the designation or name of any person or thing that he may have reason to believe may not be intelligible to the Natives in general, and which may not have been used and explained in the translates of any former Regulation, he shall in the first passage in which such word or term may occur, subjoin an explanation of it, that upon its recurring no doubt may be entertained as to its true meaning and import.—*Reg. 41, 1793, Sect. 16.*

18. It shall be the duty of the translator to revise the proof sheets of the printed translates, and to correct all errors of the press.—*Reg. 41, 1793, Sect. 17.*

19. The translator is to translate the Regulations into plain and easy language, and in all possible cases to reject words not in common use. As far as may be consistent with the preservation of the true meaning and spirit of the Regulations, he shall adopt the idiom of the native languages, instead of giving a close verbal translation of the English drafts, which must necessarily render the translates obscure, and often unintelligible to the Natives.—*Reg. 41, 1793, Sect. 18.*

20. One part of a Regulation is to be construed by another, so that the whole may stand.—*Reg. 41, 1793, Sect. 19.*

21. If any Regulation shall be passed differing from a former Regulation, either wholly or partially, the new Regulation is to be considered as a virtual repeal of the old one as far as it may differ from the latter, provided that the new Regulation be couched in negative terms, or by its matter necessarily imply a negative.—*Reg. 41, 1793, Sect. 20.*

22. If a Regulation that rescinds another Regulation, is itself afterwards rescinded, Rescinded regulation



revived by the rescinding of the repealing regulation.

the original Regulation is to be considered as revived, without any formal declaration to that purpose.—*Reg. 41, 1793, Sect. 21.*

## SECTION II.

### *Rules for Proposing Regulations.*

Magistrates and the civil and criminal courts of judicature empowered to propose regulations regarding matters coming within their cognizance.

23. The Judges of the Courts of Dewanny adawlut established in the several zillahs, and in the cities of Patna, Dacca, and Moorshedabad, both in their capacity of Judges of those courts, and as Magistrates; the Judges of the Provincial courts of appeal, in their capacity of Judges of those courts, and as Judges of the Courts of circuit; and the Judges of the Sudder dewanny adawlut, and the Nizamut adawlut, are respectively empowered to propose Regulations regarding any matters coming within their cognizance, under the rules hereafter prescribed.—*Reg. 20, 1793, Sect. 2.*

Rules to be observed by the judges and magistrates of the zillahs and cities in proposing regula-

24. If a Judge of a zillah or city court, or a Magistrate, shall deem it advisable to propose any Regulation, he is to draft it in the form, and agreeably to the rules prescribed in Regulation 41, 1793, for drafting Regulations passed by the Governor General in Council, and to submit the Regulation so drafted, to the Provincial court of appeal, or the Court of circuit of the division, according as the matter to which the Regulation may relate, may be of a civil or a criminal nature.—*Reg. 20, 1793, Sect. 3.*

Regulation how to be forwarded to the provincial court, or the court of circuit

25. The Regulation so drafted, is to be transmitted by the Register, or the Assistant to the Judge or Magistrate, with a copy of his order for forwarding the Regulation to the Provincial court, or the Court of circuit, attested with the official seal of the court, or the Magistrate, and the signature of the Register or Assistant, under a cover addressed to the Register of the Provincial court of appeal, or the Court of circuit.—*Reg. 20, 1793, Sect. 4.*

S D. A. or N. A. how to proceed upon receipt of the regulation proposed by the Judge or magistrate and the proceedings of the provincial court of appeal or court of circuit respecting it.

26. The Sudder dewanny adawlut, or the Nizamut adawlut, are to submit all the proceedings and documents which they may so receive from the Provincial court, or the Court of circuit, to the Governor General in Council, and, if they disapprove of the Regulation altogether, or approve of any one of the drafts of it, with a separate letter stating the grounds of such approval or disapproval, or, if they shall deem it advisable to adopt any one of the drafts with alterations, with a draft of the Regulation framed agreeably to their opinion, and a separate letter detailing their reasons for the alterations.—*Reg. 20, 1793, Sect. 9.*

Prov. ct. and ct. of circuit not to communicate to the Judge or magistrate their opinion on the regulation which he may propose to them.

27. The Provincial courts of appeal and the Courts of circuit are not to communicate to any Judge or Magistrate, the grounds on which they may approve, reject, or alter the draft of the Regulation which he may propose, but the Sudder dewanny adawlut, or the Nizamut adawlut, upon the draft being submitted to them by the Provincial court, or Court of circuit, may require information on any points immediately from the Judge or Magistrate by whom the Regulation may have been proposed, but not through the medium of the Provincial court of appeal or Court of circuit, and in such cases, they are to sub-

mit their queries, and the answer of the Judge or Magistrate, which the other documents regarding the Regulation, to the Governor General in Council. The Sudder dewanny adawlut, or the Nizamut adawlut, may likewise require information regarding such, or any proposed Regulation, from the Provincial court of appeal, or Court of circuit.—*Reg. 20, 1793, Sect. 10.*

28. The Sudder dewanny adawlut, or the Nizamut adawlut, are to submit all the proceedings and documents which they may so receive from the Provincial court of appeal or the Court of circuit, to the Governor General in Council, and, if they disapprove altogether of the Regulation so submitted to them, or approve of any of the drafts, they are to state the grounds of such approval or disapproval in a separate letter. If they shall deem it advisable to adopt the proposed Regulation with alterations, they are to submit the Regulation framed according to <sup>and</sup> their opinion, with a separate letter stating their reasons for the alteration, with all the documents received from the Provincial court of appeal, or the Court of circuit to the Governor General in Council.—*Reg. 20, 1793, Sect. 12.*

S. D. A. or N. A. how to proceed upon the receipt of the regulation from the provincial court of appeal or court of circuit.

29. All Regulations which the Sudder dewanny adawlut, or the Nizamut adawlut, may deem it advisable to propose to the Governor General in Council, are to be drafted in the prescribed form.—*Reg. 20, 1793, Sect. 14.*

S. D. A. or N. A. to draft regulations which they may propose in the prescribed form.

30. The Governor General in Council will reject, or adopt, any Regulation, that may be submitted to him under this Regulation; or pass such Regulation as may appear to him proper.—*Reg. 20, 1793, Sect. 15.*

The G. G. in C. will reject or adopt the proposed regulation.

[The Provincial courts of appeal and the Courts of circuit having been abolished, the enactments of the above Regulations which allude to their instrumentality in the proposal of Regulations have been omitted, as far as practicable. In proposing Regulations, the Judges of zillah and city courts will communicate direct with the Sudder Court.—*Ed.*]

### SECTION III.

#### *Promulgation of the Regulations, and Suggestions for the Correction of Errors.*

31. The Court of Sudder dewanny adawlut have had before them your letter, dated the 6th of September last, together with its annexed copy of correspondence, requesting to be informed whether the promulgation of a Regulation should be dated from the receipt of the English copy, or of the Persian translation of it.—In reply, I am desired to communicate to you the opinion of the court, that you should be guided by the instructions of Government, conveyed to you in the Chief Secretary's letter, dated the 14th of August last; and that a Regulation should be considered promulgated from the date of the receipt of the English copy.—*G. O. Cal. and West. C. 7th June, 1833.*

A regulation is to be considered as promulgated from the date of the receipt of the English copy

32. Be it enacted, that the production of a Government Gazette of any Presidency, containing an Act purporting to have been passed by the Governor General in Council, shall be held in all courts sufficient proof that such Act has been so passed.—*Act X. 1835.*

Act passed by G. G. in C. may be proved by production of the Govt. Gaz purporting to contain it.

33. Held that the provisions of an Act of Parliament come into operation from the date only on which the Regulation having reference to it is promulgated. *Mr. D'Souza versus Lieut. Wroughton.*—*S. D. A. Sel. Rep. 23d February, 1827, Vol. 4, p. 225, Index 3.*

How European officers exercising important civil functions are to act when they perceive any thing in the general system of the laws or in their application injurious to the public interests

34. It is very desirable that all European officers exercising important civil functions within the provinces should be aware, that it is the wish and expectation of Government, that when such officers shall perceive that any thing, either in the general system of our laws, or in their practical application, is calculated injuriously to affect the public interests, and shall be satisfied, after communicating with the officer in whose immediate department the evil may exist, that the correction of it requires the interposition of Government, they should not be restrained from bringing the subject forward merely by the consideration, that the case does not fall within the scope of their immediate functions.—*Cir. Ord. 22d April, 1825.*

Date of receipt of regulations to be endorsed thereon

35. With reference to the expression contained in your letter, that you cannot ascertain the exact date on which the translations were received, the Court direct me to notice, that you should invariably note on each copy of a Regulation, and of the translations thereof, the date on which they may be received in your office, attesting the note by your official signature.—*Com. No. 566, 16th July, 1830.*

## SECTION IV

### *Constitution of the Zillah and City Courts.*

Bengal, Behar and Orissa.

Cts of D. A. to be denominated after the zillah or city in which they are respectively established

36. The Courts of Dewanny adawlut, or Courts of judicature for the trial of civil suits in the first instance, established in the several zillahs in the provinces of Bengal, Behar, and Orissa, and in the cities of Patna, Dacca, and Moorshedabad, are to be denominated after the zillah, or the city, in which they are respectively established, as follows :

The Court of Dewanny adawlut established in the zillah of	Nuddea,	Nuddea.
	Beerbhoom,	Beerbhoom.
	Burdwan,	Burdwan.
	Midnapore.	Midnapore.
	Twenty-four Purgannahs,	Twenty-four Purgannahs.
	Jessore,	Jessore.
	Moorshedabad,	Moorshedabad.
	Boglepore,	Boglepore.
	Rajeshahsee,	Rajeshahsee.
	Purneah,	Purneah.
	Dinagapore,	Dinagapore.
	Rungpore,	Rungpore.
	Cooch-Behar,	Cooch-Behar.
	Sylhet,	Sylhet.
	Dacca Jelalporc,	Dacca Jelalporc.
	Momensing,	Momensing.
	Tipperah,	Tipperah.
	Chittagong,	Chittagong.
	Behar proper,	Behar proper.
	Shahabad,	Shahabad.
	Sarun,	Sarun.
	Tirhoot,	Tirhoot.
	Ramghur,	Ramghur.

is to be denominated the Court of Dewanny adawlut for the zillah of

The Court of Dewanny adawlut established at the city of { Moorshedabad, } is to be denominated { Moorshedabad. }  
 { Dacca, } the Court of Dewanny { Dacca. }  
 { Patna, } adawlut for the city of { Patna. }

—Reg. 3, 1793, Sect. 2.

37. The special jurisdiction of the zillah courts, is to extend throughout the districts, and places, that are or may be included in the zillahs in which they are respectively established, with this exception, that the courts in the zillahs of Moorshedabad, Dacca, Jelal-pore, and Behar proper, are not to have any jurisdiction within the limits of the special jurisdiction of the courts for the cities of Moorshedabad, Dacca, and Patna. The special jurisdiction of the Courts of Dewanny adawlut for the cities of Moorshedabad, Dacca, and Patna, is to extend over those cities, and the places adjacent, which are or may be included in the limits of their respective jurisdictions.—Reg. 3, 1793, Sect. 4.

Special jurisdiction of the zillah courts. Jurisdiction of the three city courts.

38. Such parts of Regulations 3, 5, and 9, 1793, and of any other Regulation now in force, as constitute the zillah of Moorshedabad a distinct and separate jurisdiction, are rescinded. The zillah of Moorshedabad is hereby abolished; and the mohals composing it shall be annexed to the jurisdictions of the Judge and Magistrate of the city of Moorshedabad, and of the Judge and Magistrate of zillah Beerbhoom, as the Governor General in Council may direct.—Reg. 1, 1806, Sect. 2.

Such parts of Reg. 3, 5, and 9, 1793, as constitute the zillah of Moorshedabad a distinct jurisdiction, are rescinded; and that zillah is abolished; the mohals composing it annexed to the city of Moorshedabad and zillah Beerbhoom.

39. The late Dutch factories at Calcutta and Dacca, and the lands appertaining to them, shall be annexed to the city jurisdictions of Moorshedabad and Dacca respectively; those at Fulta and Balasore shall be annexed to the zillah jurisdictions of the 24 Pargunnahs and Cuttack respectively, and the late Dutch factory at Patna, and the lands appertaining to it, shall be annexed to the jurisdiction of the city of Patna.—Reg. 18, 1825, Sect. 2, Cl. 2.

The Dutch factories at Calcutta and at other places annexed to the zillah and city jurisdictions within which they are situated.

40. The districts now comprised in the zillah of Burdwan shall be formed into two zillahs, the northern division to be denominated the zillah of Burdwan, and the southern division the zillah of Hooghly. The limits of each zillah are to be determined by the Governor General in Council. A Dewanny adawlut superintended by one Judge, shall be established in each zillah, with the same powers as the other zillah courts of Dewanny adawlut.....The court so established in the northern division, shall be denominated, "The Court of Dewanny Adawlut for the Zillah of Burdwan," and the court in the southern division, "The Court of Dewanny Adawlut for the Zillah of Hooghly."—Reg. 36, 1795, Sect. 7.

Add. Ct. of D. A. established in the districts now comprised in zillah Burdwan.

41. The town and settlement of Chinsurah shall be annexed to and included in the zillah of Hooghly.—Reg. 18, 1825, Sect. 2, Cl. 1.

Chinsurah annexed to zillah Hooghly.

42. A Court of civil judicature shall be re-established in the vicinity of Calcutta; to be denominated, as heretofore, the Dewanny adawlut of the Twenty-four purgunnahs.—Reg. 7, 1806, Sect. 2.

A civil court re-established in the vicinity of Calcutta.

43. Regulation 14, 1814, is hereby rescinded.—Reg. 8, 1832, Sect. 2.

Reg. 14, 1814, rescinded

44. The thannahs of Chitpore, Maniktullah, Tazeerhaut, Nowhazary, and Salkocah, Thannahs of Chit-

pore, Maniktallah, Tazeerhant, Nowhazary, and Salkeeah, united to 24-Purgahs, shall be united to the 24-Purgunnahs, and the whole district thus formed shall be denominated the zillah of the 24-Purgunnahs.—*Reg. 8, 1832, Sect. 3.*

Backergunge commission abolished and an additional court established in the districts at present comprised in Dacca Jelal-pore.

45. The office of Commissioner at Backergunge is hereby abolished, and the districts at present comprised in the zillah of Dacca Jelal-pore, including the Sunderbunds, shall be formed into two zillahs, the northern division to be denominated the zillah of Dacca Jelal-pore, and the southern division the zillah of Backergunge. The boundaries of the two zillahs shall be determined by the Governor General in Council. A Dewanny adawlut superintended by one Judge shall be established in each zillah, with the same powers as the other Courts of Dewanny adawlut.—*Reg. 7, 1797, Sect. 2.*

Parts of Reg. 3 and 7, 1793, and 7, 1797, which relate to the constitution of the jurisdiction of the city of Dacca and the zillah of Dacca Jelal-pore, as separate jurisdictions, rescinded.

46. Such parts of Regulations 3, and 9, 1793, and Regulation 7, 1797, as relate to the constitution of the jurisdiction of the city of Dacca and the zillah of Dacca Jelal-pore, as separate jurisdictions, are hereby rescinded.—*Reg. 5, 1833, Sect. 2.*

Jurisdiction of the city of Dacca and the zillah of Dacca Jelal-pore, formed into one district which shall be denominated the zillah of Dacca.

47. The places at present comprised in the jurisdiction of the city of Dacca, and the zillah of Dacca Jelal-pore, shall be formed into one district, which shall be denominated the zillah of Dacca.—*Reg. 5, 1833, Sect. 3.*

Parts of Reg. 3, 1793, and 18, 1805, rescinded, and the Cts of D. A. of zillahs Ramghur and Jungle Mehal abolished.

48. Such parts of Regulation 3, 1793, and Regulation 18, 1805, or any other Regulations as relate to the constitution of the zillahs of Ramghur and Jungle Mehal, are hereby rescinded, and the Courts of Dewanny adawlut of zillahs Ramghur and Jungle Mehal are hereby abolished.—*Reg. 13, 1833, Sect. 2.*

The G. G. declared competent by an order in C. to annex to any zillah that portion of the Ramghur and Jungle Mehal districts not included in the jurisdiction of the agent, and to make alterations in the limits of the district placed under the agent, or of any of the adjacent zillahs.

49. It shall be competent to the Governor General, by an order in Council, to annex to any zillah he may deem proper, that portion of the Ramghur and Jungle Mehal districts which is not by this Regulation included in the jurisdiction of the Agent to the Governor General, and to make from time to time such alterations in the limits of the district placed under the Agent, or of any of the adjacent zillahs as he may deem expedient.—*Reg. 13, 1833, Sect. 7.*

A court of adawlut established in zillah Cuttack for the trial of civil suits.

50. A Court of Adawlut shall be established in the zillah of Cuttack for the trial of civil suits in the first instance.—*Reg. 14, 1805, Sect. 3.*

Benares.

Courts of D. A. to be denominated after the city or zillah for which they are respectively established.

51. A Court of Dewanny adawlut, or Court of judicature for the trial of civil suits in the first instance, shall be established in the city of Benares, and at Mirzapore, Ghazee-pore, and Jnanpore, and each court shall be denominated after the city or zillah in which it may be established, as follows.—*Reg. 7, 1795, Sect. 2, Cl. 1.*

Provinces of Oude.

Zillahs in which courts shall be established.

52. Courts of Adawlut shall be established in the several zillahs, hereafter specified; and shall be denominated after the zillah, in which they are respectively established, as follows: Mooradabad, Bareilly, Etawah, Furruckabad, Cawnpore, Allahabad, Goruckpore.—*Reg. 2, 1803, Sect. 2.*

53. From and after the date specified in the preamble to this Regulation, the tract of country forming portions of the districts of Allahabad and Cawnpore, comprised in the following Police thannah divisions, viz. in the thannahs of Currah, Hutgong, Hussooah, Futtehpore, Ghazeepore, and Kishunpore, in the district of Allahabad, and in the thannahs of Bindkee, Khugooa, Corah Juhannabad, and Amowly, in the district of Cawnpore, shall constitute a distinct civil and criminal jurisdiction, to be denominated the zillah of Futtehpore. —*Reg. 6, 1826, Sect. 2, Cl. 1.*

What police thannahs of Allahabad & Cawnpore to constitute a distinct civil & criminal jurisdiction to be denominated the zillah of Futtehpore

*The Doab, Bundelkand, &c*

54. The provinces and territories, specified in the foregoing section, shall be formed into five zillahs, to be denominated as follows :

The provinces and territories above said to be formed into five zillahs.

The zillah of Allyghur.

The northern division of the zillah of Seharunpore.

The southern division of the zillah of Seharunpore.

The zillah of Agra.

The zillah of Bundelkand.—*Reg. 8, 1805, Sect. 3, Cl. 1.*

55. The city of Delhi, and the conquered territory situated on the right bank of the river Jumna, the revenues of which are assigned to His Majesty Shah Alum, are hereby declared not to be subject to any of the Laws or Regulations of the British Government, printed and published in the manner prescribed in Regulation 1, 1803.—*Reg. 8, 1805, Sect. 4.*

The laws and regulations of the British Government not to extend to the city of Delhi, or to the territories, the revenues of which are assigned to His Majesty Shah Alum.

56. Courts of adawlut shall be established in the several zillahs specified in Section 3, for the trial of civil suits in the first instance, to be denominated after the zillahs in which they are respectively established.—*Reg. 8, 1805, Sect. 5.*

Cts of A established in the several zillahs specified in Sec. 3, for the trial of civil suits.

57. The pargunnah of Goverdhun shall be annexed to the district of Agra, and the laws and regulations established for the internal administration of that district are hereby declared to be in force and effect, in pargunnah Goverdhun, from and after the promulgation of this Regulation, subject, however, to the provisions contained in the following sections.—*Reg. 5, 1826, Sect. 2.*

Pargunnah of Goverdhun annexed to Agra, and the existing laws and regulations extended to that pargunnah subject to the following provisions

58. The clakeh of Khundeh, appertaining to the pargunnah of Mahoba, together with certain villages belonging to the pargunnah of Choorkee, on the right bank of the Jumna, are hereby annexed to the district of Bundelkand, and the laws and regulations established for the internal administration of that district are declared to be in full force and effect in the clakeh and villages in question.—subject, however, to the provisions contained in the following section.—*Reg. 2, 1818, Sect. 2.*

Rules for the guidance of magistrates on the trial of offenders charged with burglary.

59. The pargunnahs of Sonk, Sonsa, and Sahar, shall be annexed to the jurisdiction of the zillah of Agra.—*Reg. 12, 1806, Sect. 2.*

Sonk, Sonsa, and Sahar annexed to zillah Agra.

60. The portion of the lands constituting the jaygeer of the late killadar of Calenger, which has been ceded to the British Government, is hereby annexed to the zillah of Bundelkand.—*Reg. 22, 1812, Sect. 3.*

Jaygeer of the late killadar of Calenger annexed to the zillah of Bundelkand

61. From and after the 30th of June, 1818, the northern division of Seharunpore shall constitute a separate civil as well as criminal jurisdiction, and the Judge and Magis-

Northern division of Seharunpore constituted a separate

civil as well as criminal jurisdiction.

trato of that division shall exercise the same powers as those vested by the Regulations in the Judges and Magistrates of other zillahs in the Ceded and Conquered provinces.—*Reg. 4, 1818, Sect. 2, Cl. 1.*

Northern & southern divisions of Scharunpore how to be denominated

62. The northern division of Scharunpore shall henceforward be denominated the zillah of Scharunpore, and the southern division shall be denominated the zillah of Meerut.—*Reg. 4, 1818, Sect. 2, Cl. 2.*

The tract of country called Deyra Doon, to be annexed to Scharunpore, and the existing laws and regulations extended to that tract of country

63. The tract of country called Deyra Doon, heretofore forming a part of Gurhwal shall be annexed to the district of Scharunpore, and shall be considered subject in all matters of police and criminal jurisdiction to the Magistrate of the northern division of Scharunpore; and in all matters of a civil nature to the jurisdiction of the Dewanny adawlut of that district. The laws and regulations established for the internal administration of the Ceded and Conquered provinces are hereby declared to be in full force and effect in the Deyra Doon, subject, however, to the provisions contained in the following sections.—*Reg. 4, 1817, Sect. 2.*

Jurisdiction of the civil and the operation of the regulations not to extend to the jaygeer granted to the Muharaja Bajee Row in Cawnpore

64. From and after the date of this Regulation, the jurisdiction of the Courts of civil and criminal judicature, and the operation of the General Regulations, shall not extend to the tract of land aforesaid, (viz that tract of land situated near the town of Bethoor, in the district of Cawnpore, which has been granted by Government as a jaygeer during pleasure to Muharaja Bajee Row,) the limits of which have been accurately marked out and defined, and are recorded in the office of the Magistrate of Cawnpore.—*Reg. 1, 1832, Sect. 2.*

The G. G. in C. may, by order in council, create new zillahs, and alter the limits of existing zillahs

65. It is hereby enacted, that from the 1st day of October, 1836, it shall be lawful for the Governor General in Council, by an order in council, to create new zillahs in any part of the Presidency of Fort William in Bengal, and to alter the limits of existing zillahs.—*Act XXI. 1836.*

Transfer of the Danish settlements on the continent of India to the Hon Company

66. Whereas a treaty between His Majesty the King of Denmark and the Honourable the East India Company, was concluded and signed in Calcutta on the twenty-second day of February in the year of our Lord one thousand eight hundred and forty-five.

And whereas by the first article of the said treaty His said Majesty the King of Denmark engaged for a certain consideration therein specified, to transfer the Danish settlements on the continent of India with all the public buildings and crown property thereunto belonging, to the said Company:

And whereas by the 4th article of the said treaty it was provided that the inhabitants of the aforesaid settlements, Europeans as well as Natives, who should continue to reside within the settlements, should be placed under the protection of the general law of British India, and their religious, personal, or acquired rights as formerly enjoyed under the Danish Government, should be respected as all rights of person or property are throughout British India. And that all suits commenced and pending in the Danish courts at the time when the treaty should come into force, should be carried on and decided by the same law as far as altered circumstances would allow. And that the same should be observed in all cases of appeal subsequent to the treaty, but no complaint or

suit which should have been finally settled and decided under the Danish administration, and not appealed in due time under observance of the rules for appeal then in force should be deemed appealable; nor should it be lawful to bring forward again subsequently to the conclusion of the said treaty, by petition, complaint, or otherwise, such cases as should have already been finally determined by competent authority:

And whereas in pursuance of the said treaty the town of Fredericksnagore or Serampore, comprising 60 biggahs commonly called Fredericksnagore, and the districts of Serampore, Ackna and Pearapore, with all the public buildings and crown property thereunto belonging, were transferred by His said Majesty the King of Denmark to the said Company on the tenth day of October in the year of our Lord one thousand eight hundred and forty-five:

It is therefore hereby declared, that the inhabitants of the said town and districts, Europeans as well as Natives, who continue to reside within the settlements are placed under the protection of the general law of British India, and their religious, personal or acquired rights, as formerly enjoyed under the Danish Government, shall be respected as all rights of person or property are throughout British India.

And it is hereby further declared, that all suits commenced and pending in the Danish courts of the said town and districts at the time when the treaty came into force, shall be carried on and decided by the same law as far as altered circumstances will allow, and that the same shall be observed in all cases of appeal subsequent to the treaty, but no complaint or suit which has been finally decided under the Danish administration and not appealed in due time under observance of the rules for appeal then in force, shall be deemed appealable, nor shall it be lawful to bring forward again subsequently to the conclusion of the said treaty, by petition, complaint, or otherwise, such cases as have already been finally determined by competent authority.

And it is hereby further declared, that the said town of Fredericksnagore or Serampore, and the said districts of Serampore, Ackna and Pearapore are hereby annexed to the territories subject to the Presidency of Fort William in Bengal.

And whereas by Act XXI. of 1836 it was enacted, that it should be lawful for the Governor General in Council, by an order in council to create new zillahs in any part of the Presidency of Fort William in Bengal and to alter the limits of existing zillahs:

And whereas for the more convenient administration of the law within the said town of Fredericksnagore or Serampore, and the said districts of Serampore, Ackna and Pearapore, it is expedient that the limits of zillah Hooghly should be altered so as to include the same: the following order in council has this day been passed by the President of the Council of India in Council, and is hereby promulgated for general information.—*Proclamation of the 29th November, 1845.*

Serampore annexed to the district of Hooghly

67. Whereas a treaty between His Majesty the King of Denmark and the Honourable the East India Company was concluded and signed in Calcutta on the twenty-second day of February in the year of our Lord one thousand eight hundred and forty-five:

And whereas by Section 3 of Article II. of the said treaty a piece of ground at Bala-sore, formerly a factory, containing eighteen biggahs, two cottahs, twelve chittacks of



tenanted ground, and heretofore dependant on the Danish settlement of Fredericksnagore or Serampore, was transferred to the said East India Company in common with the Danish settlements on the continent of India and other property belonging to His Danish Majesty. on the tenth day of October in the year of our Lord one thousand eight hundred and forty-five.

It is therefore hereby declared, that the inhabitants of the said piece of ground at Balasore, who continue to reside within the same, are placed under the protection of the general law of British India, and their religious, personal or acquired rights, as formerly enjoyed under the Danish Government, shall be respected as all rights of person and property are throughout British India.

And it is hereby further declared, that all suits commenced and pending in the Danish courts, affecting any of the inhabitants of the said piece of ground at the time when the treaty came into force shall be carried on and decided by the same law as far as altered circumstances will allow, and that the same shall be observed in all cases of appeal subsequent to the treaty, but no complaint or suit which has been finally decided under the Danish administration and not appealed in due time under observance of the rules for appeal then in force, shall be deemed appealable, nor shall it be lawful to bring forward again subsequently to the conclusion of the said treaty, by petition, complaint or otherwise, such cases as have already been finally determined by competent authority.

And it is hereby further declared, that the said piece of tenanted ground at Balasore is hereby annexed to the territories subject to the Presidency of Fort William in Bengal.

And whereas by Act XXI. of 1836 it was enacted, that it should be lawful for the Governor General in Council, by an order in council, to create new zillahs in any part of the Presidency of Fort William in Bengal and to alter the limits of existing zillahs:

And whereas for the more convenient administration of the law within the boundary of the said piece of ground at Balasore, it is expedient that the limits of zillah Cuttack should be altered so as to include the same; the following order in council has this day been passed by the President of the Council of India in Council and is hereby promulgated for general information.

It is hereby ordered, that the limits of zillah Cuttack be altered, so as to include the piece of ground at Balasore, formerly a factory of the Danish Government and dependent on the Danish settlement of Fredericksnagore or Serampore.—*Supplemental Proclamation, 28th Feb., 1846.*

seals of the courts

68. The Zillah and City courts are to use a circular seal, one inch and three quarters in diameter. The seals of the Zillah courts in the provinces of Bengal, and Orissa, and the courts for the cities of Dacca, and Moorshedabad are to bear an inscription to the following effect in the Persian and Bengal characters and languages. The seals of the Zillah courts in Behar, and the court for the city of Patna, are to have a similar inscription in the Persian language and character, and the Hindoostanee language and Nagree character. "The seal of the Dewanny Adawlut of the zillah (or city) of ——— The

Transfer of a piece  
of ground at Balasore  
to the Hon. Company

seal of each court is to remain in the custody of the Judge.—*Reg. 3, 1793, Sect. 6.—Benares, Reg. 7, 1795, Sect. 6.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 14.*

69. Each Zillah and City court is to be superintended by one Judge, who, previous to entering upon the execution of the duties of his office, is to take and subscribe the following oath before the Governor General in Council, or any person whom he may commission to administer it. “I, A. B. appointed Judge of the Dewanny adawlut of the zillah (or city) of \_\_\_\_\_ solemnly swear, that I will administer justice conformably to the Regulations that have been or may be passed by the Governor General in Council, to the best of my ability, knowledge, and judgment, without fear, favour, promise, or hope of reward; that I will not receive, directly or indirectly, any present or nuzzur, in money or effects of any kind, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court of which I am appointed Judge; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzur, in money or effects from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; that I will render a true and faithful account of all sums of money that may be paid into the court, or disbursed from it; that I will not be concerned, directly or indirectly, in the purchase of any goods or commodities in the British dominions in Bengal for the purpose of remitting money to Europe, nor in any commercial transactions; and that I will not derive, directly or indirectly, any emoluments or advantages from my station, excepting such as the orders of Government do or may authorize me to receive. So HELP ME GOD.”—*Reg. 3, 1793, Sect. 3.—Benares, Reg. 7, 1795, Sect. 3.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 13.*

Each zillah court to be superintended by one judge.

70. When the number of civil causes depending before the Judge of any Zillah or City court may be such as to require the aid and appointment of Additional Judges for the speedy investigation and decision of such causes, the Governor General in Council, at the recommendation of the Court of Sudder dewanny adawlut, or otherwise, if it shall appear to him expedient, will appoint any number of Additional Judges for the zillah or city wherein it may be requisite, to be denominated “Additional Judges of such zillah or city;” who, previously to entering upon the execution of the duties of his office, shall take and subscribe the same oath as is directed to be taken and subscribed by the Judges of the Zillah and City courts.—*Reg. 8, 1833, Sect. 2, Cl. 1.*

Provision for appointment of additional judges, when requisite.

71. The Additional Judges so appointed are empowered to perform any part of the duties of the Judge of the zillah or city to which they may be appointed that the Governor General in Council may assign to them; and such Additional Judges, in the performance of those duties, will exercise the same powers and be guided by the same rules and regulations in every respect as the zillah or city Judge.—*Reg. 8, 1833, Sect. 2, Cl. 2.*

Duties and powers of additional judge.

72. The Zillah and City courts are to be held in a large and convenient room in the city or place at which they are respectively established, three days in every week, or oftener if the state of the business shall render it necessary. Whenever the Judge of a Zillah or City court, from indisposition or other cause, shall be prevented holding a court

Courts to be held in a large room three days in every week, or oftener if necessary. Judges to inform the S D A whenever they may be prevented.

ed holding a court as often as is herein required.

No act to be done but on court days and in open court

Judges will report the number of days they have sat in court, and the number on which it was shut.

Prohibition of judicial officers from transacting public business in their private dwellings

three days in each week as above required, he is at the expiration of the week, to report the cause of the court not being so held to the Sudder dewanny adawlut. This report is not to be made when the court may be shut pursuant to orders from the Sudder dewanny adawlut under Section 23. Regulation 6. 1793. No rule, order, proceeding, or decree, is to be made, but on court days, and in open court.—*Reg. 3, 1793, Sect. 5.—Benares, Reg. 7, 1795, Sect. 5.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 14.*

73. The Honourable Court having expressed a desire that the number of days on which the zillah Judges have actually sat in court should be included in the periodical returns, I am directed to request that you will enter in your monthly statements of civil business a memorandum, stating the number of days you have sat in the Civil court, and the number of days you have sat in the Criminal court. You will also be pleased to note the number of days that the court was shut on account of Sundays or holidays, or from any other cause, during the month.—*Cir. Ord. 7th Dec. 1828.*

74. I am desired by the Court of Sudder dewanny adawlut to forward to you, for your information, in guidance, the accompanying extract (paragraph 17), from a letter to my address from the Secretary to Government in the Judicial department, dated the 16th ultimo, and to request that you will, in conformity thereto, prohibit in the strongest manner all the judicial officers under your control from resorting to the practice referred to. "The only point which requires particular notice in these paragraphs, is the practice adverted to in paragraph 23, of judicial and revenue officers transacting public business in their private dwellings. The Governor General in Council entirely approves the intention of the court to call the attention of the Commissioners of circuit, and through them, that of the Magistrates, to this subject. The prohibition should also extend to the provincial and zillah Judges, and be impressed upon the whole of the judicial officers in the strongest terms."—*Cir. Ord. 3d July, 1829, par. 17.*

## SECTION V.

### *Zillah and City Judges—Rules regarding Leave of Absence and Inspectional Tours.*

Zillah and city judges to apply to the G. G. in C. for permission to quit their stations, and to wait the receipt thereof

Except in emergent cases  
What the letter of application is to contain

75. Any zillah or city Judge and Magistrate who may be desirous of quitting his station, on whatever account, is to apply for permission to the Governor General in Council, and, except in emergent cases of indisposition, is not to leave his station until such permission shall have been obtained and received. The letter of application is to specify the purpose for which the leave of absence is applied for: the period for which it is desired; and the name of the Register, or senior assistant on the spot, to whom the charge of the offices of Judge and Magistrate will devolve, if not otherwise provided for.—*Reg. 4, 1796, Sect. 2*

Applications for leave to be sent to the Government direct

76. Pursuant to instructions from the Government, the Court request that all communications, heretofore made to them, on the following subject, be, in future, addressed direct to the Judicial secretary:—Application for leave of absence on the part of the Judges.—*C. O. 27th April, 1843, par. 1.*

77. The Governor General in Council, on receipt of the abovementioned applications, will determine in every instance, wherein he may grant leave of absence to the Judge and Magistrate to quit his station, whether to delegate the temporary execution of the duties of Judge and Magistrate, to the Register or senior assistant on the spot; or to appoint any other person by a special commission thereto; or to make other provision for carrying on such part of the business of the station, civil and criminal, as cannot be postponed, according to the urgency and circumstances of the case. The result of this determination will be immediately communicated to the Judge and Magistrate, and his Register and assistant, or any other person appointed to act for him; and notice of it is to be given at the same time to the Courts of Sudder dewanny and Nizamat adawlut, and the Provincial courts of appeal and circuit, within whose jurisdiction the Zillah or City court of the Judge and Magistrate, to whom leave of absence may be granted is situated.—*Reg. 4, 1796, Sect. 3.*

The G. G. in C. will determine in every instance whether to delegate the duties of judge and magistrate, to the register and senior assistant, or to appoint any other person thereto.

To whom his determination will be communicated.

78. The zillah or city Judges and Magistrates to whom leave of absence may be granted, are to report their actual departure from their stations, as well as their return thereto, to the Governor General in Council, the Courts of Sudder dewanny and Nizamat adawlut, and the Courts of appeal and circuit, within whose jurisdiction their respective courts may be situated.—*Reg. 4, 1796, Sect. 4.*

To whom zillah and city judges and magistrates are to report their departure from and return to their stations,

79. The Governor General in Council entirely approves the suggestion of the Sudder dewanny adawlut, for directing the zillah and city Judges and Magistrates in future to accompany their applications for leave of absence with a statement of the business depending before them, both in the Civil and Criminal courts.—His Lordship in Council likewise desires, that the same rule may be extended to all similar applications from the Registers; that is, that the Judges, in forwarding such applications to Government, will accompany them with the necessary statement of the business depending before the Registers, both of a civil and criminal nature.—*Cir. Ord. 4th Jan. 1811, par. 2.*

Judges and magistrates and registers to submit to Government, with applications for leave of absence, a statement of the business pending before them

80. In modification of the Court's circular of the 3rd October last, I am directed to inform you, that the Court have been pleased to dispense with the copy of the order under which you may deliver over charge of your office; but request, that you will state in your letter the authority for doing so, the date of the order under which you act, and the nature of the power vested in the relieving officer.—*Cir. Ord. Cal. C. 5th Dec 1834, West. C. 7th Nov. 1834, and 23rd Jan. 1835.*

On delivering over charge of an office, the authority for doing so, and the nature of the power vested in the relieving officer must be mentioned

81. It having occasionally been pleaded by civil functionaries, who have recently joined their offices, in answer to calls by the Court for replies to letters and for periodical statements overdue, that, not having had time to look into their records, they were not aware that the replies or statements had not been sent; the Court have been pleased to resolve that all Judges, Commissioners, Magistrates, and Joint Magistrates, on delivering over charge of their offices, shall furnish the officer who relieves them with a list of all unanswered letters, and of all periodical reports and statements which, having become due, have not been forwarded to this Court.—*Cir. Ord. Cal. and West. C. 25th Sept. 1835.*

Judicial officers delivering over charge of their offices, are required to furnish the relieving officer with lists of unanswered letters, and of periodical statements overdue.

82. I am directed to desire that you will acquaint the courts, that in order to enable the Auditor to carry into effect the resolutions of Government of the 28th April last, and of the 19th ultimo, respecting leave of absence, the Honourable the Vice-President in Council has been pleas-

Certificates to be furnished to the civil auditor by judicial officers obtaining leave of absence

ed to resolve, that any officer in the Judicial department, who may obtain leave of absence, shall forward to the Auditor's office, certificates signed by the person to whom he may deliver over charge, and from whom he may again receive charge of his office ; specifying the dates on which he may have relinquished, and on which he may have resumed charge respectively.—*Cir. Ord. 31st Oct. 1809.*

Reports to be made when a public officer quits & rejoins his station, or takes charge of the office, to which he is appointed.

83. The Vice-President in Council, having taken into his consideration the best means of preventing delay on the part of persons who may be appointed to offices in the judicial department, in arriving at their stations, is pleased to direct, that the Courts of Sudder dewanny a 'awlut and Nizamut adawlut report to Government, whenever any such person, that is, any provincial, zillah or city Judge or Magistrate, or any Register, or assistant at the different Courts of judicature may omit to arrive at the station, to which he may have been appointed, within a reasonable time, due allowance being made for the distance of the place from which he may have been removed, and for any delay, which may have unavoidably occurred, in delivering over charge of his late office to his successor.—*Cir. Ord. 17th Jan. 1806, par. 1.*

Government will determine upon the penalty for delay.

84. On the receipt of such report, (which is to be accompanied with the sentiments of the person by whom the report may be furnished,) Government will determine whether the person made any unnecessary delay in joining his station should be considered to have forfeited his salary, under the rules passed by the Governor General in Council, on the 20th November, 1797, or will pass such other orders on the subject as the case may appear to require.—*Cir. Ord. 17th Jan. 1806, par. 2.*

Rule applicable to all judicial functionaries.

85. The Vice-President in Council farther resolves, that the principle of the foregoing orders be likewise considered applicable to all persons in the judicial, revenue, and commercial departments, who may at any time obtain leave of absence from their stations, and that the courts and boards accordingly report to Government, whenever any such person shall neglect to rejoin his station within the period limited by the leave granted to him.—*Cir. Ord. 17th Jan. 1806, par. 4.*

Rule regarding inspectional tours.

86. The Court of Sudder dewanny adawlut for the lower provinces, having been vested by Government with the discretionary power of authorizing Civil Judges to make inspectional tours within the limits of their respective districts, whenever such may appear advisable, are pleased to give public intimation of the same, and to direct that, whenever a Civil Judge may consider it expedient to visit each, or any, of the mofussil courts subordinate to him, he will submit a report explaining the considerations, or circumstances, that may have suggested it, the object which it is proposed to effect, and the probable duration of his contemplated absence. On receiving such an application, the Court will be generally prepared to accede to the same with the understanding that on the completion of such inspectional tour, the Judge shall report fully on all matters connected with the character, conduct, and qualifications of the Moonsiffs, with their mode of conducting business, and with the condition of their offices, so far as opportunity of forming a judgment on these points shall be afforded to him.—*C. O. 5th Sept. 1845, par. 1.*

State of business in the court to be reported with application to make the tour.

87. In forwarding applications of the nature adverted to, the Civil Judges will be expected to annex a statement of the business, both regular and miscellaneous, pending in their courts, and a memorandum shewing the number of commitments and criminal appeals awaiting decision at the date of such application.—*C. O. 5th Sept., 1845, par. 2.*

## SECTION VI.

*Zillah and City Judges—Duties of Assistants in charge of the Judge's Office.*

88. In cases wherein the charge of the offices of Judge and Magistrate of any zillah or city may, from death, indisposition, or other casualty, devolve to the Register or senior Assistant on the spot, without any express provision for the same having been made by the Governor General in Council, as specified in Section 3 of this Regulation, an immediate report of the circumstances of the case is to be made, "by such Register or Assistant, to the Governor General in Council for his orders; and, till the receipt thereof, he is to confine himself to the discharge of the proper duties of his station as Register or Assistant; and to the exercise of such part of the powers of Judge and Magistrate as may be indispensably necessary for the immediate execution of processes from the Provincial courts of appeal and circuit; or of orders from the Sudder dewanny and Nizamat; for preserving the peace of the district, or for such other cases of emergency as may not admit of delay. —Reg. of 1796, Sect. 5.—Ord. and Cong. Prov. Dec. 12, 1801."

Report to be made in the G. G. m. C., when the offices of judge and magistrate may devolve on the register and senior assistant, from death, multiplication, or other casualty.

Duties to be performed by the register and assistant in such case till the receipt of orders.

89. Whenever the charge of the current duties of Civil and Session Judges, or of Government Officers of Government may, from death, indisposition or other casualty, devolve to the Assistant attached to the court; or when ever the Assistant to the Commissioner, Collector, or Magistrate, or any other covenanted European officer may, by the orders of a competent authority, take charge of the current duties of the office of Judge or Session Judge, (not being vested by Government with the full power of Judge,) such Assistant or other officer shall confine himself to the exercise of such part of the powers of Judge as may be indispensably necessary for the immediate execution of processes or orders of the Sudder dewanny and Nizamut adawlut, for the issue of warrants under sentence of the Nizamut adawlut, making returns to such warrants, and the transmission to the Court of the proceedings in criminal trials, and for the execution of the processes from other Zillah or City courts, or for such other cases of emergency as will not admit of delay.—*Civ. Ord. Cal and West C. 6th Feb. 1835, Rule 1.*

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14- Rule for defining  
the duties to be per-  
formed by assistants  
and clerks in  
charge of the office  
of civil and session  
judge

90: The Court propose, with the concurrence of the Judges of the Western Court, to inform Mr. Repton that it was competent to him, under the concluding words of the first paragraph of the rules for defining the duties of Assistants in charge, circulated on the 6th February, 1835, to cause the execution of the decrees from which appeals had been preferred, to be stayed; taking the usual security from the party against whom the decree was given, if necessary—*Con. 1038, Col. C. 19th Aug. West. C. 16th Sept. 1836.*

### Duties of assistants in charge of the office of civil and session judge

91. Such Assistant or other officer is also authorized to receive any new civil suits of whatever description, which may be instituted according to the Regulations ; to refer to the subordinate courts such as may be cognizable by them, and to proceed upon suits which are exclusively cognizable by the Judge, so far as to issue notice to, or summon the defendant, and receive his answer, as well as any written documents or lists of witnesses which may be offered by the parties or their advocates, in pursuance of orders passed previously by the Judge ; but no further, unless in any instance there shall appear to be urgent reason to take the evidence of any witness or witnesses in such suits, in which case he may take or cause to be taken the

Rule for defining the duties to be performed by assistants and other officers in charge of the office of civil and session judge

depositions of such witnesses under the general rules prescribed for the conduct of the zillah and city Judges.—*Cir. Ord. Cal. and West. C. 6th Feb. 1835, Rule 2.*

The Judge on delivering over charge will certify that he has called the attention of the relieving officer to those rules

92. He is likewise empowered to receive any sums which parties may be desirous of depositing in cases of mortgage, or as vakeels' fees; and pay to vakeels or other parties sums for the payment of which the Judge may have already given orders. He shall also be empowered to conduct, in conformity to the Regulations, any summary inquiries which may appear to require immediate attention and process; to make the summary investigations respecting the indigence of persons desirous of suing *in forma pauperis*, and the validity of security tendered by parties under the orders of the Judge or other competent authority; to carry into effect orders passed previously by the Judge for the sale of property attached in execution of decrees or other judicial process, or to stay the sale of such property pending the investigation of objections or claims preferred; but it shall not be competent to the Assistant or other officer to hold such investigation, or to issue orders for the sale of such property, excepting when it may be of a perishable nature.—*Ibid, Rule 3.*

Rule for defining the duties of assistants in charge of the current duties of the Judge's office

93. I am directed by the Court to communicate to you their opinion, that you [an Assistant in charge] are competent to suspend the execution of an order passed by the Judge for the sale of the property, under the exercise of a sound discretion, on a perusal of the petition objecting thereto, 1797. or will consider it right to do so; but that you cannot hold any investigation with a view to ascertain the truth or otherwise of allegations or claims contained therein.—With reference to your concluding paragraph I am directed to state that, on a petition of summary appeal being presented, you are not competent to make any enquiry on the merits of the case, but should merely record the date of its presentation, and let it lie over for the next coming Judge; and further, that you are not competent to pay any money in deposit unless under an order passed by the Judge before you received charge of the office, or unless the payment be directed by an express order of this Court or of any other Court in execution of whose decree it may have been deposited.—*Con. 996, Cal. C. 8th Jan. 1836, West. C. 5th Feb. 1836.*

Rule for defining the duties to be performed by assistants and other officers in charge of the office and session judge

94. The Assistant or other officer in charge will cause to be prepared and forwarded any statement or reports which the Civil or Session Judge may, under the rules in force, be required to submit to the Sudder dewanny or Nizamut adawlut, or to Government, as the case may be.—*Cir. Ord. Cal. and West. C. 6th Feb. 1835, Rule 4.*

Assistants in charge may give temporary leave of absence

95. In continuation of Circular Order No. 131, dated 6th February, 1835, containing rules for defining the duties of functionaries in charge of the current business of the office of Civil and Session Judge, I am directed to communicate to you the rule that follows:—It having been determined by the Court that the power should be possessed by officers in charge of current duties, of giving leave of absence for a limited term, and when urgently required, to the vakeels of the Court, and generally to the amlah of the Civil and Session Judge's establishment, such power will in future be exercised by them with limited application to occasions of temporary absence, in cases of emergency not admitting of delay. You will be pleased to append this, as Rule 5, to the circular quoted above, and to apprise such officers as may at any time receive charge of the current business of your office of its purport.—*Cir. Ord. Cal. and West. C. 11th Oct. 1839.*

Assistant in charge

96. I am directed to communicate to you the opinion of the Court that an Assistant in

charge of the office of Civil Judge may summon parties charged with resistance of civil process, and examine the witnesses for and against the prosecution, and, if he consider the charge proved, hold the offenders to bail until the arrival of the Judge, who, under the provisions of Section 3, Regulation 9, 1799, must pass the final order.—*Con. 1080, Cal. C. 16th March, 1837, West. C. 31st March, 1837.*

## SECTION VII.

*Zillah and City Judges—Reports on their Official Conduct.*

97. In hearing appeals from the Zillah courts, every Judge of the Court of Sudder dewanny adawlut shall note, as each case proceeds, any points that may strike him as affecting materially the character of the court below; and whenever, at the conclusion of an appeal, any Judge may be of opinion that the proceedings of such a court have been either remarkably well, or remarkably ill conducted, it shall be his duty to make a note thereon for the consideration of the Court, collectively, at their English sitting. The Court will determine in what manner these notes may be made available in the preparation of their annual report, for the expression of their collective opinion on the quality of the business performed by every zillah. *Submitted for Govt. Notification, 20th Dec. 1836.*

The S. D. A. in hearing appeals from the judges will note down whatever may affect the character of his court

98. The Court of Sudder dewanny adawlut is hereby required to make a special report on the subject of any zillah, in which they may be of opinion that the state of civil business is such as to make it desirable for the sake of the public interests, that measures should be immediately taken to remedy the evil. In cases of less importance, it shall be the duty of the court to notice in their annual report any serious defect which they may believe to exist in the administration of civil justice in any district under their jurisdiction.—*Ibid.*

The S. D. A. will specially report on the state of civil business, when necessary

99. In addition to the number of cases decided by each zillah Judge, the number of miscellaneous judicial orders passed by him, and the number of days employed in sessions business, which information is now given in the annual report of the Court of Sudder dewanny adawlut, that report shall in future shew the number of appeals, regular and special, lodged against such decisions and miscellaneous orders, the result of all the appeals of a like nature from each Judge decided on during the course of each year, and the number of days in which each Judge sat for the transaction of civil business.—*Ibid.*

The S. D. A. will shew in their report the number of appeals, and their result and the number of days each judge sat for business

## SECTION VIII.

*Zillah and City Judges—Enquiry into their Official Misconduct and into that of Public Functionaries.*

100. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, whenever either of the Courts of Sudder dewanny and Nizamut adawlut, either of the Sudder boards of Revenue or the Board of customs, Salt and Opium, shall be of opinion that substantial grounds exist for making a regular and formal enquiry into the truth of any imputation of official misconduct affecting any officer subject to their controul

If courts of S. D. A. or N. A., or sudder board of revenue, or board of customs, salt and opium, see substantial grounds for making a formal enquiry into truth of charge of official mis-



conduct in any officer not removable without the sanction of Govt., they shall propose articles for investigation to be submitted to Govt. of Bengal, &c

respectively, and not removable without the sanction of Government, they shall submit the documents on which their opinion may be founded, together with a statement of the charges reduced to distinct articles which they may propose to be made the subject of a regular investigation, to the Governor of Bengal, or to the Lieutenant Governor of the North Western Provinces, or to any functionary exercising the authority of Government in the North Western Provinces, as the case may be, according to the authority to which they may be subject, for his consideration and orders.—*Act XXV. 1839, Sect. 2.*

Any such charge may be made direct to the said courts or boards, who shall examine the complainant upon oath, &c and require the accused to explain or reply, &c

101. And it is hereby enacted, that any charge or information, of the description aforesaid, may be preferred direct to either of the Courts of Sudder dewanny and Nizamut adawlut, either of the Sudder boards of Revenue, or the Board of customs, Salt and Opium, respectively, who shall examine the complainant or informant circumstantially upon oath, or upon solemn affirmation, if he be entitled to be exempted from taking an oath, and require the party accused to explain or reply to any matters they may deem to need explanation and make such further enquiries, upon oath of affirmation upon the subject, as they may judge proper.-- *Ibid*, Sect. 3

And such charge may also be made before judge, magistrate, &c. for the purpose of taking the deposition, who shall examine the complainant, &c. and transmit the deposition to the said courts or boards respectively as the case may be, &c.

And it is hereby enacted, that any charge or information, may also be made by the Magistrate, Commissioner of Revenue, or Collector, for any acts of the desert or as before mentioned committed within their jurisdiction, respectively, who shall examine the complainant or informant circumstantially upon oath, or upon solemn affirmation, if he be entitled to be exempted from taking an oath, and shall transmit the deposition so taken to the Sudder dewanny and Nizamut adawlut, the Sudder board of Revenue or the Board of customs, Salt and Opium, according as the person accused may be subject to those authorities respectively.—*Ibid.* Sect. 4.

The said courts or boards shall not act upon such charge unless the person preferring the same shall make oath or affirmation that he believes the facts to be true.

103 And it is hereby provided, that it shall not be lawful for the Courts of Sudder dewanny and Nizamut adawlut, or the sud boards, respectively, to act upon any such charge or information, unless the person preferring the same shall make oath, or solemn affirmation in case he be entitled to be exempted from taking an oath, that he believes the facts on which the charge is grounded to be true.—*Ibid*, Sect. 5

The said courts and boards respectively may dismiss any such charge, and submit the same as provided in sec. 2 of this act.

101. And it is hereby provided, that it shall be lawful for the Courts of Sudder dewan-ny and Nizamut adawlut, and for the said boards, respectively, to dismiss any such charge or information, where they do not see any substantial reason for entering further into the enquiry. Provided, that on every occasion when they shall dismiss any such charge or information, they shall submit the same, together with all the circumstances of the case, in like manner as is provided in Section 2 of this Act.—*Ibid*, Sect. 6.

The said courts and boards may require the person preferring charge to give security for his attendance and for due prosecution thereof.

105 And it is hereby provided, that the said Courts of Sudder dewanny and Nizamut adawlut, and the said boards, respectively, may, at any stage of the enquiry into such matters as aforesaid, require the person preferring such charge or information as aforesaid to furnish such security as may be deemed reasonable, that he will attend and prosecute the charge to a conclusion, and in the event of security being so required all proceedings shall be stayed until the same shall be furnished accordingly.—*Ibid*, Sect. 7.

106. And it is hereby provided, nevertheless, that if any matter of the nature aforesaid affecting such officer as is mentioned in the second section of this Act shall appear in the course of any proceedings, whether preliminary or otherwise, which shall come before or be reported to either of the Courts of Sudder dewanny and Nizamut adawlut, or any of the said boards, respectively, those authorities shall act upon such matter, or institute such enquiry upon oath or affirmation as aforesaid into the same as they shall deem proper, for the purpose of such reference as aforesaid to the Governor of Bengal, or to the Lieutenant Governor of the North Western Provinces, or to the authority exercising the powers of Government in those provinces as aforesaid, although no charge or information be preferred as aforesaid; and in such cases it shall not be necessary, before acting upon or instituting any enquiry concerning any matter so appearing in the course of proceedings, to require any oath or affirmation in regard to the truth of such matter.—*Ibid*, Sect. 8.

If matters affecting any officer appear in the course of proceedings before the said Courts or boards, they may institute enquiry for the purpose of referring the same to the Governor of Bengal, &c

107. And it is hereby enacted, that if the Governor of Bengal, or the Lieutenant Governor of the North Western Provinces, or the authority exercising the powers of Government in those provinces as aforesaid, upon such reference as is mentioned in the second section of this Act, shall concur with the authority by which it may be submitted, or if such Governor, or Lieutenant Governor, or authority exercising the powers of Government shall from information of the description aforesaid that may be laid before him in respect to such officers as aforesaid, not directly subject to the courts or boards above named, deem it necessary to institute proceedings against any such officers, he shall appoint a Commissioner or Commissioners for making a regular and formal enquiry into the truth of the matters referred.—*Ibid*, Sect. 9.

If the Governor of Bengal, &c upon such reference shall concur with the authority making the reference, or if he think it unnecessary to institute proceedings against others, shall appoint a Commissioner or Commissioners.

108. And it is hereby enacted, that on the appointment of every such commission, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, shall direct whether the commission shall be placed under the control of any of the authorities aforesaid, or shall act immediately under the authority of Government, and all commissions appointed as aforesaid shall be guided by the instructions which they may receive in this behalf from the Government to which they may be respectively subordinate.—*Ibid*, Sect. 10

Commissioner to be guided by instructions from Governor of Bengal, &c., as to whether he is to act under the control of any other authority.

109. And it is hereby enacted, that the Commissioner or Commissioners appointed as aforesaid, before entering on the discharge of his or their duties, shall take the following oath:—"I, A. B., Commissioner for the purpose of (here state the object of the commission) do solemnly swear that I will faithfully and impartially perform the duty committed to me without fear, favor, or bias, to the best of my ability, knowledge, and judgment. So HELP ME GOD."—*Ibid*, Sect. 11

The Commissioner shall take the following oath. Form of oath

110. Held, that if a Commissioner appointed under Act XXVI, 1839, have not subscribed the oath, required by Section 11 of that Act, before an officer authorised to administer the same, his proceedings are altogether illegal and invalid.—*Con. 1289, West. C. 28th Nov. Cal. C. 10th Dec. 1839.*

Otherwise his proceedings are illegal

111. And it is hereby enacted, that whenever a charge shall be referred for investi-

Governor, &c. to

determine whether the conduct of the prosecution shall be left to the accuser or be undertaken on the part of government.

gation to a special commission, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, will determine whether the conduct of the prosecution shall be left to the accuser, or be undertaken on the part of Government. In the latter case, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, will nominate such person or persons as may be deemed proper, to conduct the prosecution on behalf of Government.—*Act XXVII. 1839. Sect. 12.*

Commissioner after receiving plaint, &c., shall call upon the accused for his reply; shall examine witnesses and receive documentary evidence, &c.

112. And it is hereby enacted, that it shall be the duty of Commissioners appointed under this Regulation, after receiving the plaint or charge, and the documents from which the same may have been prepared, to call upon the person accused for his reply to the accusation; to examine upon oath, or under a solemn declaration, the witnesses named by the accuser of the accused: to receive any further written documents offered in support of, or against the accusation; and to call for and take any further requisite evidence which may be indicated by the witnesses adduced or documents exhibited by either party, and may appear to be necessary for the ascertainment of facts, or the discovery of the truth or falsehood of the charges, or of any part thereof.—*Ibid. Sect. 13.*

Commissioner at Zillah and City courts, except that all compulsory process shall be served through the Zillah or City Judge.

113. And it is hereby enacted, that for the discharge of the duties specified in the preceding section, or any other functions which may be delegated to a commission under this Regulation, such commission shall be vested with the same powers as are exercised by the Zillah and City courts, except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through the Zillah or City Judge in whose jurisdiction the commission may be held, and executed by the Zillah or City Judge in whose jurisdiction the witness or other person upon whom the process is to be served may reside.—*Ibid. Sect. 14.*

At the close of the evidence the accused and accuser may record observations in support of their respective cases.

114. And it is hereby enacted, that on the close of the evidence for the prosecution and defence, the accused shall be at liberty to record any observations upon the result of the enquiry which he may think necessary for the vindication of his conduct and character. The accuser or the person appointed to conduct the prosecution on the part of Government, shall also be at liberty to record any remarks on the subject of the prosecution which he may deem requisite.—*Ibid. Sect. 15.*

Commissioner to transmit proceedings to government, with his opinion of the merits of the case.

115. And it is hereby enacted, that as soon after the conclusion of the proceedings as circumstances shall permit, the Commissioner or Commissioners shall, when the commission shall be instructed to act immediately under the authority of Government, submit directly to the Government to which he or they may be subordinate, and in other cases to the controlling court or board, the proceedings under the commission, accompanied by translations of papers not in the English language, together with a summary of the pleadings and evidence, and his or their opinion of the merits of the case.—*Ibid. Sect. 16.*

Governor, &c. may, upon consideration of the report of Commissioner, direct him to take further evidence, or give further

116. And it is hereby provided, that it shall be lawful for the said Governor, Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, or the controlling court or board, upon consideration of the report of any such commission as aforesaid, to direct the Commissioner or Commissioners to take further

evidence or to give further explanation of his or their opinion or opinions connected with the case investigated, and the Commissioner or Commissioners are authorized and required to take such further evidence, and to give such further explanation.—*Ibid*, Sect. 17.

117. And it is hereby enacted, that the Sudder dewanny and Nizamut adawlut, or the board to which any report of a Commissioner or Commissioners may be submitted as aforesaid, after due consideration of the same, and after obtaining such further evidence or explanations as they may require, shall submit the whole of the proceedings and documents received by them to the Government to which they may be subordinate, together with their opinion whether any and what charges have been established against the accused.—*Ibid*, Sect. 18.

The court or board to which any report of a commissioner may be submitted, &c. shall finally submit the whole of the proceedings with their opinion to government.

118. And it is hereby provided, that whenever a special commission may be appointed under the provisions of this Act, the said Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, will determine on a view of the nature and circumstances of the case, whether the accused officer shall be suspended from the discharge of the functions of his office: and if so, whether he shall be permitted to draw the established allowances of his office, or otherwise.—*Ibid*, Sect. 19.

When special commission is appointed, Governor, &c. shall determine whether the accused shall be suspended, and if so, whether he shall draw the allowances of his office.

119. And it is hereby provided, that the Governor, or Lieutenant Governor, or authority exercising the powers of Government in the North Western Provinces, on consideration of the report and proceedings submitted to him in pursuance of Sections 16 and 18 of this Act, will pass such decision on the case as may appear to him most consonant to the principles of justice, and consistent with the powers possessed by Government in matters of this description: and in the event of his deeming it necessary that the party accused should be brought to trial, by a public prosecution before a competent court of law, will issue the necessary instructions for that purpose to the law officers of Government. But whatever proceedings may be held, or whatever decision or order may be passed by Government, individuals deeming themselves aggrieved by any public officer, will be at all times at liberty to seek redress according to the ordinary forms prescribed by law.—*Ibid*, Sect. 20.

The Governor, &c. will pass the decision as he considers most just, and if he deems it proper, may direct the accused to be brought to a public trial.

120. And it is hereby enacted, that nothing in this Act contained shall be construed to repeal the provisions respecting the dismissal and suspension of Principal and other Sudder Ameen contained in Section 26, of Regulation 5, of 1831, or the provisions respecting the dismissal of Deputy Collectors contained in Section 25, of Regulation 9, of 1833. Provided always, that it shall be lawful for the Governor of Bengal, or the Lieutenant Governor of the North Western Provinces, or the authority exercising the powers of Government in those provinces, respectively, upon any such reference as is mentioned in Section 26, of Regulation 5, of 1831, and Section 25, of Regulation 9, of 1833, at his discretion, to appoint a Commissioner or Commissioners for making such regular and formal enquiry touching imputations of official misconduct affecting any Principal or other Sudder Ameen or any Deputy Collector as he shall think fit, in manner as is directed by this Act, and subject to its provisions.—*Ibid*, Sect. 21.

This act not to repeal provisions contained in sec 26, reg. 5, 1831, and sec. 25, reg. 9, 1833, respecting dismissal, &c. of principal and other sudder ameen and deputy collectors. Governor may appoint commissioners to enquire respecting alleged official misconduct of those officers.

## SECTION IX

*Zillah and City Judges—Employment of their Private Servants on Public Duties, and vice versa.*

All officers in the judicial department prohibited under penalty of dismissal from office, from employing their private servants in the execution of any public duty

121. The whole of the officers of Government, employed in the judicial department, civil or criminal, are prohibited, under penalty of dismissal from office, from employing, directly or indirectly, their private servants of whatever description, or any other persons, not being public officers duly appointed or nominated in conformity with the rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed may not have been duly authorized to act.—*Reg. 8, 1825, Sect. 2, Cl. 1.*

Extent and nature of this prohibition

122. The prohibition contained in the Regulation above quoted extends to all individuals not being duly constituted officers of the court, and the latter description of persons alone can legally be employed in the transaction of any official duties. The enactment in question, however, need not, in the opinion of the Court, be construed to preclude persons other than the regularly appointed officers of the courts from taking copies of public documents, with the sanction of the Judge and Magistrate, for the use of private individuals, at the expense of those who may employ them.—*Con. 407, 11th Nov. 1825.*

Parts of reg. 25, 1803, and reg. 8, 1825, not to extend to the employment of individuals not being public officers, in the copying of papers and proceedings

123. Such parts of Section 12, Regulation 25, 1803, and of Clause 1, Section 2, Regulation 8, 1825, as have been construed to prohibit Collectors and all judicial officers from employing any persons not being public officers, duly appointed or nominated, in conformity with the rules in force, relative to such appointments in the discharge of any part of their public duties, are hereby declared not to extend to the employment of individuals in the copying of papers and proceedings, or in similar functions, for the due execution of which the proper officers must be held responsible. The rules however, contained in the clause last mentioned, and in Regulations 2, 1793, and 5, 1795,\* prohibiting Collectors and judicial officers from so employing, directly or indirectly, their private servants of whatever description, shall remain in full force.—*Reg. 10, 1829, Sect. 6.*

The rules prohibiting collectors and judicial officers from employing their private servants, shall remain in full force

And from employing any public officers on their establishments, not being persons or other inferior servants in the execution of any part of their private business, or private trust, relating to their personal concerns

124. The whole of the judicial officers are in like manner, and under the same penalty prohibited from employing any of the public officers on their establishments, not being persons or other inferior servants, in personal attendance upon a Judge, Magistrate, or other officer of Government in the judicial department, in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns.—*Reg. 8, 1825, Sect. 2, Cl. 2.*

Native officers in the judicial department, disqualified from public employment under the prohibitions, referred to, to be immediately removed from

125. If any of the Native officers, now on the establishment of any officer of Government in the judicial department, shall be disqualified from continuing to hold the office now held by him, under the prohibitions contained in the preceding section, he shall be immediately removed from such office, and a successor appointed to it, according to the rules

\*The rules in these two Regulations refer only to Collectors

prescribed in the existing Regulations. Any neglect of this requisition will subject the party committing it to the same penalty as that provided for in the foregoing section.—*Ibid*, Sect. 3.

Any neglect of the above regulation will subject the party to the same penalty

126. In all future nominations of Native officers by the Judges and Magistrates or other judicial officers, which may be submitted to the Provincial courts of appeal and circuit, under the provisions of Regulation 9, 1803, or of any other Regulation in force, the Judge, Magistrate, or other officer making such nomination is required to state explicitly, in addition to the information called for by the existing rules, that the person so nominated is not disqualified under the provisions of the present Regulation; and it will, at all times, be the duty of the Provincial courts to see that these provisions are observed; as well as to report any wilful infringement of them to the Courts of Sudder dewanny or Nizamut adawlut for the information and orders of Government.—*Ibid*, Sect. 4.

In all future nominations of native officers, judges & magistrates to state to provincial courts, that the person nominated is not disqualified under the provisions of this regulation

Provincial courts to enforce due observance of above rules, and to report to S. D. A & N A any wilful infringement of them

### SECTION X.

*Zillah and City Judges—Prohibition of borrowing from, or lending to, Natives under their official influence.*

127. All covenanted civil servants, in whatever department of the public service they may be employed, are henceforward prohibited under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any Native officer under their authority, or under the authority of any of their subordinate functionaries, or from or to the known surety, agent, relation, connection, or dependant of any such Native officer, or from or to any person of whom such Native officer may be known to be or to have been the servant, agent, surety, or dependant.—*Reg. 7, 1823, Sect. 2, Cl. 1.*

Civil servants prohibited from borrowing money from, or from native officers under their authority, or their connections.

128. In like manner and under the like penalty, all officers of Government being covenanted civil servants, are henceforward prohibited from borrowing money from or in any way incurring debt to any manager, guardian, executor, ameen, sezawul, gomastah, farmer, motuwallee, or other person, who may in any way be officially accountable to them, or from and to the known surety, agent, relation, connection, or dependant of such person.—*Ibid*, Cl. 2.

And from other persons officially accountable to them

129. All Judges of Zillah and City courts, all Magistrates, Joint Magistrates, Registrars and assistants to Magistrates, all Collectors, and Deputy Collectors of the land revenue, all assistants to such Collectors or other officers, exercising the powers of such Collector, are prohibited under pain of dismissal from office, from borrowing money from or in any way incurring debt to any zemindar, talookdar, ryot, or other person possessing real property, or residing in, or having a commercial establishment within the city, district, or division, to which their authority may extend.—*Ibid*, Sect. 3.

Certain officers prohibited from incurring debt to zemindars and others residing in, or having property within their districts

130. All persons are prohibited from lending money, or otherwise becoming in any way creditor to any officer of Government, being a covenanted civil servant, in contravention of the above rules:—And any person lending money, or in any way becoming creditor to any such public officer in breach of this prohibition, shall forfeit to Government a

Prohibition against lending money to civil servants, contrary to the above rules  
Penalty for breach of this prohibition

sum equal to the amount for which he shall have so illegally become creditor.—*Ibid.*  
Sect. 4.

Officers in debt  
contrary to the above  
rules, to report the  
fact at the expiration  
of one year

131. If any officer of Government now in debt shall at the expiration of one year, from the promulgation of this Regulation, be still indebted to any person from whom it would at such period be illegal for him to borrow under the above rules, it shall be incumbent on such officer to make known the circumstance to the Governor General in Council; and in the event of information not being so given, the same penalty shall attach to the said officer, as if the debt had been incurred subsequently to the promulgation of this Regulation.—*Ibid.*, Sect. 5.

Penalty for omit-  
ting so to report

Officers receiving  
new appointments if  
indebted to individu-  
als, contrary to the  
above rules, to report.

132. In like manner, if any covenanted servant, who may be hereafter appointed to any office, shall at the time of such appointment, be indebted to any person with whom it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant before entering on the duties of the office, to make known the circumstance to the Governor General in Council; and failing to do so, he shall be subject to the same penalty as if the debt had been contracted subsequently to his being appointed to the said office.—*Ibid.*, Sect. 6.

Penalty for omit-  
ting to report

Penalties to be en-  
forced by process in  
at the suit of Govern-  
ment.

133. Suits for the recovery of penalties incurred under this Regulation, shall and may be instituted under the special instructions of the Governor General in Council, and shall be conducted by the Superintendent and Remembrancer of Legal Affairs, or by such other officer as Government may nominate for that purpose. Such suits shall be instituted in the Provincial court of the division, within which the transaction may have taken place, or the lender may reside, or may possess real or personal property. An appeal shall lie from judgments passed in such cases, in like manner, as from other judgments passed in original suits, by the Provincial courts, and the judgments shall be enforced under the provisions of the regulations for the execution of other decrees of the civil courts.—*Ibid.*, Sect. 8.

The zillah and city  
judge, collectors of  
public revenue and  
others, prohibited em-  
ploying on their es-  
tablishment any na-  
tives being their pri-  
vate creditors

134. From and after the promulgation of this Regulation, no person, being a creditor of any zillah or city Judge or Magistrate, of any Collector of the land revenue or customs, or of any Agent for the provision of salt or opium, shall be appointed to any official situation on the establishment of the person whose creditor he may be. It shall consequently be the duty of the Boards of Revenue and Trade, of the Board of Commissioners, and of the Courts of appeal and circuit, on receiving the reports prescribed by the provisions of Regulation 8, 1809, to satisfy themselves fully that the Natives, recommended to fill any vacancies on the establishment of the European officers acting under their control respectively, are not the creditors of the latter. With this view, it will be the duty of the said boards and courts to make full enquiries on the subject, not only from the officers from whom such reports may be received, but through such other channels as may be necessary to guard against any infringement or evasion of the provisions of the present Regulation.—*Reg. 21, 1814. Sect. 2.*

Duty of the boards  
and provincial courts  
in their case

Foregoing rules  
equally applicable to  
relatives and depen-  
dants of such native  
creditors.

135. The rules contained in the preceding section for precluding the creditors of the public officers above-mentioned from being employed on their public establishments, shall be considered equally applicable to the relatives and dependants of such creditors: the former

as well as the latter, shall consequently be equally precluded from being employed on the establishments of any of the public officers above described.—*Ibid*, Sect. 3.

136. Any Native causing himself to be appointed to any office in opposition to the provisions of Regulation 21, 1814, as hereinbefore extended, or in any way knowingly accepting office in contravention thereof, shall forfeit to Government a sum equal to ten times the yearly salary or allowances attached to the situation, to which he may be appointed.—*Reg. 7. 1823, Sect. 7.*

Penalty on natives knowingly taking office in contravention of the above rules.

137. The Judges and Magistrates of the Zillah and City courts, the Judges of the Provincial courts of appeal, and the Courts of circuit, and the Registers, to their respective courts, and their assistants, or other officers being covenanted servants of the Company and the Collectors of the revenue and their assistants, are prohibited lending money, directly or indirectly, to any proprietor or farmer of land, or dependant talookdar, or underfarmer or ryot, or their sureties, and all such loans as have been made in opposition to the repeated prohibitions of Government, or which may be hereafter made, are declared not recoverable in any Court of judicature.—*Reg. 38, 1793, Sect. 2.*

Covenanted servants of the Company employed in the administration of justice or the collection of the revenue prohibited lending money to proprietors or farmers of land, &c on their sureties

138. A bond taken from the respondent, a landholder in Ramghur, pronounced null and void, as being indirectly, in favor of the *dewan* of the Collector of the zillah, in opposition to a special Regulation: and also as having been obtained by undue influence.—*N. D. A. Sel. Rep. 19th Sept. 1806, Vol. 1, p. 165.*

A bond from a landholder, indirectly in favor of the collector's *dewan*, null and void

## SECTION XI

### *Zillah and City Judges—Correspondence with Suitors, or with other Courts.*

139. The Judges of the Zillah and City courts, are prohibited corresponding by letter with parties in suits, process, or matters, depending before them, or coming within their cognizance. If a party in a suit, or a person amenable to the jurisdiction of the court, shall have any matter to represent to the court, he is either to appear in the court in person and represent the matter in writing, or make the representation in writing through an authorized vakeel. The court is to pass whatever order upon the representation may appear to it proper, consistently with the Regulations, and to direct a copy of the order to be delivered to the person making the representation, or to his vakeel, under the seal of the court, and attested by the Register.—*Reg. 3, 1793, Sect. 19.*

Zillah and city courts prohibited corresponding with parties in suits, or any person, respecting matters cognizable in the courts

140. The Judges of the Zillah and City courts are also prohibited corresponding by letter with the Provincial courts of appeal [sudder courts] respecting any cause or matter before those courts, or upon any matters whatever on which they may not be specially empowered so to correspond. When a Judge shall have occasion to communicate to the Provincial court [sudder court] any information that may be required from him by the court, or which he may deem it necessary to submit to the court, respecting any matter or cause that may be before it, he is to certify it to the court by a writing under his official seal and signature.—*Ibid.*

Judges of the zillah and city courts prohibited corresponding with the provincial courts.

141. I am directed by the Sudder dewanny adawlut to inform you, that it is the intention

Rule to be observed



by civil courts in their communications with the S. D. A.

of the Court, in pursuance of Section 13, Regulation 6, 1793, to issue to your court, and the Zillah and City courts within your division, all process to parties and witnesses, and all decrees and orders of the court in causes, in the Native languages, but enclosed in an English precept.—You will accordingly adopt a similar mode of communication with the court; and, when you may have any information to certify to the court, or any return to make to the orders of the court, will enclose in an English certificate or return, copy of or extract from your Persian proceedings, containing the information to be certified, or the particulars of what may have been done in execution of the orders of the court, accompanied by the proceedings of the Zillah or City courts, and any original documents requisite without English translates, unless by the special orders of the Court.—I am directed to add, that the miscellaneous correspondence of the court, not immediately relative to particular causes, or affecting particular parties, will continue to be carried on in English. *Cir. Ord. 20th April 1801.*

Extension of Circ. Order of 20th April 1801, to courts of appeal and Zillah courts, in communication with each other, and with officers of Govt. generally, on matters relating to judicial business.

113. The Sudder Dewanny Adawlut is directed, that you will transmit copies of their circular notice of the 20th April, 1801, and of the present notification, to the Judges of the several courts within your division, with instructions to observe the same mode of communication in their certificates and return to your court, or to the Sudder dewanny adawlut, as well as in any applications they may have occasion to make to any other court, or to the Collectors, or other European officers of Government, for papers, information, or for any other purpose; in which cases, copies of or extracts from their Persian proceedings, containing the substance of the application, should be enclosed in a short English address, requesting compliance with the application so made, or if it be a case in which the court is directed or empowered to issue an order and precept to an European officer of Government, the Persian\* copy of such order, or an extract from the proceedings containing it (in the language of the record) should be enclosed in an English precept, under the seal of the court, and signature of the Judge or Register, requiring performance of the order so transmitted, within the limited time, or that sufficient cause be assigned within such period why the order is not put in execution. *Cir. Ord. 12th Oct. 1803.*

Immediate references to S. D. and S. A. by judges, magistrates, courts of circuit and appeal, a statement of the case to be submitted in the letter accompanying the proceedings.

114. The Courts of Sudder dewanny adawlut and Nizamut adawlut being of opinion that whenever any proceedings, on miscellaneous cases, are referred to them, for their opinion, orders or information, whether by the Zillah and city Judges and Magistrates, or by the Provincial courts of appeal, or Courts of circuit, a statement of the case, and of the point, or points, referred for the opinion or orders of the Sudder dewanny adawlut, or Nizamut adawlut, should be invariably submitted in the letter accompanying the proceedings so referred, I am directed to request you will instruct the several Judges and Magistrates within your division to observe this rule in future; and that your court will likewise conform to it, when occasion may arise.—*Cir. Ord. 27th Feb. 1812.*

Judicial authorities to number all letters despatched from their offices.

144. As the practice of numbering letters which obtains in the offices of the Secretaries to Government, in this office, and in some of the offices in the interior, is not universally adopted, and as it has been found where it obtains useful in facilitating references to letters, without the necessity of recapitulating the subject of them, I am directed by the Court to request that you will, from the commencement of the ensuing year, number all that may be despatched from your office, in one continued series from the commencement to the close of the year.—*Cir. Ord. Cal. and West. C. 27th Nov. 1835.*

\* Persian has since been abolished.

145. The Governor General in Council directs that hereafter all servants of the Government, who may have occasion to refer in their letters to any numbered paragraphs of letters received, will, in the margin, state briefly the substance of the several paragraphs to which they so refer.—Every letter should as far as possible be made intelligible in itself, without reference to any other document for the elucidation of its meaning, and great inconvenience to the public service, besides that of delay, may occasionally arise from the letter containing the paragraphs referred to not being within the reach of the person to whom the letter making such reference is addressed.—*Ch. Ord. 17th Nov. 1846.*

The substance of every letter quoted, to be given.

146. In such cases, [that is in all cases in which Resolution 5, 1831, has been introduced] the general correspondence and periodical details of establishments will be submitted directly to Government or the Sudder Dewanny Adawlat, without the intervention of the Provincial court.—*Ch. Ord. Cal. and West. C. 2nd March 1847.*

General construction. Details of establishment.

147. All references which the officers of the judicial department may have occasion to make to the Nawab of Bengal under the provisions contained in Section 10, Regulation 16, 1793, and generally, all other applications which those officers may deem it necessary to make to the Nawab, shall be transmitted to his Highness through the channel of the officer holding the appointment of Superintendent of Nazamut affairs.—*Reg. 19, 1805, Sect. 2.*

All references to the Nawab of Bengal to be made by the judicial officers through the Supt. of Nazamut affairs.

148. Held that a zillah Judge was not warranted in refusing payment of money to a party in consequence of objections urged by an attorney at the Bar on a letter addressed to him by an attorney of the Supreme Court.—*Reg. Sec. 10, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 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152. Under the 11th head of the statement it should be noticed whether the nominee is related to, or connected with, any and what persons in office, or of rank or influence, or possessing extensive property in the district to which he may be nominated, or in any other district; also the degree of estimation in which the nominee was held in the district in which he had been employed or had resided.—*Ibid*, par. 4.

153. Under heads 12 and 13, the Commissioner and Judge respectively should distinctly state what opportunities he had of making himself acquainted with the character and qualifications of the person nominated.—*Cir. Ord. Cal. and West. C. 14th June, 1833, par. 5.*

154. It is expected that the Judge and Commissioner will seek and select persons, otherwise duly qualified, who may be known and generally respected to be men of integrity and high character.—*Ibid*, par. 6.

Certificate required  
of nominees

155. With reference to the orders of Government, republished with the Court's circular, dated 20th June last, in which it is provided, that "Candidates for judicial offices shall certify in their applications, that they are not engaged in any trading speculations," the Court are pleased to direct that in all nomination statements for moonsiffs sent up in future, according to the form prescribed by Circular Order, No. 88, dated 14th June, 1833, the Judges will alter column 11, the present heading of which is as noted in the margin,\* in the mode following:— "Certificate that the nominee is not disqualified by any Regulation, and that he is not engaged in trade or trading speculations," and will supply, beneath, the information required by such altered heading.—*Cir. Ord. 2d Dec. 1842.*

To whom communications  
regarding the appointment, pro-  
motion and transfer of  
P. S. A. and S. A.  
and reports of vacancies  
to be made

156. Pursuant to instructions from the Government, the Court request that all communications heretofore made to them, on the following subjects, be, in future, addressed direct to the Judicial Secretary.—Appointment, promotion, and transfer of uneovenanted Judges above the grade of Moonsiff. Reports of vacancies in the offices of Principal Sudder Ameen, Sudder Ameen, and Moonsiff of the 1st grade, to be made direct, so that the Government may receive without delay all information necessary to make the required appointments. With regard to Moonsiffs of the 1st grade, a report is also to be made to the Court, to enable them to make arrangements for filling up the vacant office.—*Cir. Ord. 27th April, 1843, par. 2.*

## SECTION XIII.

### *Appointment of Principal Sudder Ameen.*

The G. G. in C.  
may appoint P. S.  
ameens

157. It shall be competent to the Governor General in Council to appoint to any zillah or city jurisdiction one or more Principal Sudder Ameen, with the powers hereinafter specified.—*Reg. 5, 1831, Sect. 17. Cl. 1.*

Persons eligible to  
the office, and how to  
be nominated

158. The office of Principal Sudder Ameen shall be open to Natives of India of any class or religious persuasion. The persons selected for the office shall be appointed by the Governor General in Council, and shall receive their sunnuds or commissions from Government, under the signature of the Secretary in the Judicial department.—*Ibid*, Cl. 2.

No person, by rea-  
son of place of birth,  
or of descent, incap-

159. It is hereby enacted, that from the 31st day of March, 1836, no person whatever shall by reason of place of birth, or by reason of descent, be incapable of being a Prin-

\* Certificate that the nominee is not disqualified by any Regulation, and general remarks

Principal Sudder Ameen, Sudder Ameen, or Moonsiff, within the territories subject to the Presidency of Fort William in Bengal.—*Act VIII. 1836, Sect. 1.*

160. And it is hereby enacted, that every British-born subject of the King, or descendant of such British-born subject, who shall be appointed a Principal Sudder Ameen, Sudder Ameen, or Moonsiff shall, in respect of all acts done by him as such Principal Sudder Ameen, Sudder Ameen or Moonsiff, be liable to the same proceeding as well criminal as civil, and shall be amenable to the jurisdiction of the same tribunals as if he were not of British birth or descent.—*Ibid. Sect. 2.*

161. The Principal Sudder Ameen will receive such monthly allowances as may be fixed by the Governor General in Council.—*Reg. 5, 1831, Sect. 17, Cl. 3.*

162. Every person appointed to the office of Principal Sudder Ameen shall, previously to entering upon the execution of the duties of his situation, make and subscribe before the Judge of the zillah or city in which he may be employed, the solemn declaration required by Section 2, Regulation 18, 1817.—*Ibid. Cl. 4.*

163. Instead of the prescribed oath, which is required by the Regulations in force, the several Native officers referred to in the above clause, shall hereafter make and subscribe, in open court or in the established public office, before the Judges, Boards, Collectors, Commercial Residents, and Agents, or other European authorities to which they may be respectively subject, a solemn declaration to the same effect with the form of oath heretofore prescribed, except that the word "declare" shall be substituted for "swear," and that the declarer shall not be sworn thereto.—*Reg. 18, 1817. Sect. 2, Cl. 2.*—"I, A. B., appointed to the office of Serrishtadar (or other head officer, or Moonshee, Mohurrer, or Nazir) to the Sudder dewanny adawlut, or the Nizamut adawlut (or the Provincial court of appeal for the division of ———, or the Court of circuit for the division of ———, or the Dewanny adawlut of the zillah or city of ———) solemnly swear, that I will truly and faithfully perform the duties of the office to which I have been nominated, to the best of my knowledge and ability, that I will not receive, directly or indirectly, any present or nuzer, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzer, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; and that I will not derive, directly or indirectly, any advantages or emoluments from my office, excepting such as the orders of Government do or may authorize me to receive."—*Reg. 13, 1793, Sect. 4.*

164. In pursuance of the orders of Government, under date the 22d ultimo, I am directed by the Court to request that you will cause seals of brass with inscriptions as below to be prepared and delivered to the Principal Sudder Ameen and Sudder Ameen of your district, charging the expense in your contingent bill.—*Cir. Ord. Cal. C. 4th March, West. C. 15th March, 1833.*

Sec. 11, reg. 2, 1821, and cl. 2 and 3, sec. 2, reg. 3, 1824, applicable to P. S. A. stationed at a distance from the zillah court.

165. The provisions of Section 11, Regulation 2, 1821, and of clauses second and third, Section 2, Regulation 3, 1824, are declared applicable to Principal Sudder Ameens, or Sudder Ameens who may be stationed at any other place than the fixed station of the Zillah or City court, or with jurisdiction within the limits of any magistracy, joint magistracy, collectorship, or deputy collectorship.—*Reg. 7, 1832, Sect. 17.*

Nomination of P. S. A. on a vacancy

166. On any vacancy occurring in a principal sudder ameenship, the Court of Sudder dewanny adawlut shall select and nominate to Government, the three Sudder Ameens best qualified in their judgment to fill the vacant appointment.—*Govt. Ord. 30th July, 1836, par. 4.*

Order of nomination, or indication of quality of merit.

167. In every practicable case, the rule with regard to order of nomination, or indication of estimated equality by brackets, laid down at the close of the second article, be observed by the Sudder court.—*Ibid, par. 5.*

P. S. A. must have served as S. A.

168. No person who has not served in the grade of Sudder Ameen, will be considered eligible for a Principal sudder ameenship.—*Ibid, Note.*

P. S. A. to be informed that the most deserving of those officers will be annually reported by the court to Govt

169. You will be further pleased to take this opportunity of apprising the Principal Sudder Ameens, that a specific report containing the names of all Principal Sudder Ameens, whose conduct and proceedings may appear to merit that distinction, will be submitted annually by this Court to the Honorable the Governor of Bengal.—*Civ. Ord. 7th Oct. 1836, Lower Provinces only.*

P. S. A. appointed to districts in which they are in debt

170. No Principal Sudder Ameen or Sudder Ameen should be appointed to any district to the inhabitants of which he is largely indebted. *Civ. Ord. Cal and West. C. 26th March 1832.*

## SECTION XIV.

### *Prosecution of Principal Sudder Ameens*

P. S. A. liable to criminal prosecution for corruption or extortion.

171. Principal Sudder Ameens shall be liable to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty, and on conviction before the Court of circuit, shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case, but no Principal Sudder Ameen shall be liable to be prosecuted for want of form, or for error in his proceedings or judgments, nor shall any process be issued against a Principal Sudder Ameen who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the zillah or city Judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded.—*Reg. 5, 1831, Sect. 26, Cl. 5.*

## SECTION XV.

### *Appointment of Sudder Ameens.*

Rules regarding the nomination of S. A.

172. The zillah and city Judges, in conjunction with the Commissioners of Revenue and Circuit, shall revise the present establishment of Sudder Ameens in the zillahs and cities to which this Regulation may be extended—and the selection and number of these officers, as well as of the Moonsiffs, shall be regulated in future in such manner as the

Governor General in Council may be pleased to direct, the office being open to Natives of India of any class or religious persuasion.—*Reg. 5, 1831, Sect. 13.* [*The situation is now open to all: vide as above, Rule 159 of this Chapter.*]

173. Similar sunnuds shall also be granted to all persons, who may be hereafter appointed to the office of Sudder Ameen.—*Reg. 23, 1814, Sect. 65, Cl. 2.* [*Since the promulgation of Reg. 5, 1831 it has been the practice for Government to give the order of appointment to the Sudder Ameen.*]

Similar sunnuds granted to sudder ameens who may be hereafter appointed.

174. Every person, who may in future be appointed to the office of Sudder Ameen, shall previously to entering upon the execution of the duties of his situation, take and subscribe an oath according to the form prescribed in the Appendix, No. 8, before the Judge of the zillah or city in which he may be appointed to officiate; but the Judge is empowered in all cases, in which he may deem it expedient, to exempt such Sudder Ameen from taking the oath, and in lieu thereof to cause him to subscribe a solemn declaration to the same effect. *Reg. 23, 1814, Sect. 66.*—“I, A. B., appointed to the office of Sudder Ameen of the zillah or city ———, do solemnly swear, that in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment, without partiality, favor or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute; I will strictly adhere to all the rules prescribed for my guidance; and I will in all respects truly and faithfully execute the trust reposed in me.”—*Appendix, No. 8 to Reg. 23, 1814.*

Form of oath to be taken and subscribed by S. A. hereafter appointed.

A solemn declaration may be admitted in lieu of oath.

175. The provisions of Sections 9 and 10 of this Regulation are hereby declared to be applicable to the office of Sudder Ameens, as well as to that of Moonsiffs appointed under this Regulation: the Sudder Ameens are to hold their cutcherries at the station where the Zillah or City court is held, in such convenient places as the Judge may direct.—*Reg. 23, 1814, Sect. 67.*

Sec. 9 & 10, of this reg. applicable to S. A. whose cutcherries shall be held in such places as the judges may direct.

176. The provisions of Section 11, Regulation 2, 1821, and of clauses second and third, Section 2, Regulation 3, 1824, are declared applicable to Principal Sudder Ameens, or Sudder Ameens who may be stationed at any other place than the fixed station of the Zillah or City court, or with jurisdiction within the limits of any magistracy, joint magistracy, collectorship, or deputy collectorship.—*Reg. 7, 1832, Sect. 17.*

Sec. 11, reg. 2, 1821, and cl. 2 and 3, sec. 2, reg. 3, 1824, applicable to P. S. A. or S. A. stationed at a distance from zillah court.

177. In pursuance of the orders of Government, under date the 22d ultimo, I am directed by the Court to request that you will cause seals of brass with inscriptions to be prepared and delivered to the Principal Sudder Ameen and Sudder Ameens of your district, charging the expense in your contingent bill.—*Cir. Ord. Cal. C. 8th March, West. C. 15th March 1833.*

Form and inscription of seals to be used by the S. A.

178. On any vacancy occurring in a sudder ameenship, by death, removal from office, or other cause, the Court of Sudder dewanny adawlut shall select from the several district lists, (after calling for any information which they may deem requisite with respect to any of the nominees, and referring to the records of their own office,) and submit for the consideration of

Rule to be observed on any vacancy in the office of S. A.

Government, the names of the three Moonsiffs best qualified in their judgment to fill the vacant appointment.—*Govt. Ord. 30th July 1836, par. 3.*

S. A. must be one of three moonsiffs recommended, and must have served as moonsiff

179. In future no Sudder Ameen is to be appointed, except he be one of three Moonsiffs recommended for promotion by the sudder court, and unless he have served as a Moonsiff for at least twelve months previous to the date of recommendation.—*Govt. Not. 4th Aug. 1840, par. 11.*

Parts of regs. 1814, and 2, 1821 included.

180. Such parts of Regulation 23, 1814, and of Regulation 2, 1821, or of any other Regulation in force, as authorize Sudder Ameen to receive as a compensation in original suits and appeals decided by them, or adjusted before them by *razeenamah*, the amount of the institution fee, or stamp duty substituted for such fee, on the suits or appeals so decided or adjusted, are rescinded, and shall have no operation after the 30th day of April, 1824.—*Reg. 13, 1821, Sect. 2, Cl. 1.*

S. A. to receive monthly allowances in lieu of fees

181. From the first day of May, 1824, the Sudder Ameen shall in lieu of the fee and compensation abovementioned, receive from Government such monthly allowances as may be fixed for them respectively, by the orders of the Governor General in Council.—*Ord. Cl. 2.*

Mahomedan and Hindoo law officers not to be S. A.

182. The Mahomedan and Hindoo law officers of the Zillah and City courts, shall not be deemed Sudder Ameen ex-officio, but shall be eligible to the office like other individuals.—*Reg. 5, 1831, Sect. 11, Cl. 2.*

*Law officers eligible to Moonsiffships and in case of particular merit to the post of Sudder Ameen without an examination. Vide page 41, No. 227.*

Appointment vested with the powers of moonsiff at the sudder station

183. I am directed by the Court to forward to you an extract of a letter from the Secretary to the Government of Bengal in the Judicial department, in reply to a communication from this court recommending that the best qualified Moonsiff in the zillah should be appointed to discharge the duties of Sudder Ameen of the district, in addition to his regular duties as Moonsiff of the sudder or first division of the district. The suggestion having been sanctioned by Government, you will be pleased immediately to select the best qualified Moonsiff in your district, and to submit in the prescribed form through the Commissioner, a recommendation to Government that he be nominated Sudder Ameen of the district and Moonsiff of the sudder or first division of the zillah. On receiving the authority of Government to nominate an individual to this office, you will, agreeably to Section 15, Regulation 5, 1831, refer to this officer in his capacity of Sudder Ameen all suits between the value of 300 and 1000 rupees which may now be pending before any other tribunal. As Moonsiff of the sudder division, he will of course receive and try all suits not exceeding 300 rupees, provided the cause of action shall have arisen within the limits of his jurisdiction. I am directed to inform you that the principal object contemplated by this arrangement is to relieve the file of the Principal Sudder Ameen of your court from all cases between the value of 300 and 1000 rupees that are now necessarily retained thereon; and thus to enable that officer to afford you greater assistance in the disposal of the arrears of appeals pending in your district. You will therefore be careful to strike out of the file of the Principal Sudder Ameen every case under the amount of 1000 rupees, referring them to the Moonsiff or to the Sudder Ameen, unless any special reasons should exist for a contrary arrangement. On these instructions being duly completed, the Court request you will furnish

a report on the arrangements you may have made, noting the number of cases that you have transferred to the file of the Sudder Ameen, together with any other observations that may appear to you necessary to be submitted for their information.—*Cir. Ord. 3d April, 1835, Lower Provinces only*

## SECTION XVI.

*Sudder Ameen—Civil Actions and Criminal Prosecution against them.*

184. Moonsiffs shall be liable to an action in the civil court for corruption in the discharge of their trust, or for extortion, or for any oppressive or unwarranted act of authority: and upon proof of the charge to the satisfaction of the Judge, he shall cause the offender to pay such damages and costs to the party injured as may appear to be equitable.—*Reg. 23, 1814, Sect. 10, Cl. 1.*

Moonsiffs may be sued for corruption in the civil courts and liable to discretionary costs and damages

185. Moonsiffs shall also be liable to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty, and on conviction before the Court of circuit shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no Moonsiff shall be liable to be prosecuted for want of form or for error in his proceedings or judgments, nor shall any process be issued against a Moonsiff, who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the Judge shall be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded.—*Ibid. Cl. 2.*

Moonsiffs may be prosecuted criminally in certain cases and liable to fine and imprisonment on conviction

Process not to be issued against moonsiffs without previous enquiry into charge

186. The provisions of Section 10 (as above) of the Regulation, are hereby declared applicable to the office of Sudder Ameen, as well as that of Moonsiffs.—*Ibid. Sect. 67*

S A's catcheries shall be held in such places as judges may direct

[*The several Government Orders of 15th January, 1834, printed in this work indented as below, have never been incorporated with any law, but may be found useful for the information of suitors and the Courts.*]

187. On the principles stated in the letter of the Sudder court, actions under Regulation 23, 1814, Sections 10 and 67, against Moonsiffs, Sudder Ameen, and Principal Sudder Ameen, for corruption, extortion, or any oppressive or unwarranted act of authority, which if proved, would subject the offender to pay damages and costs to the party injured, should be preferred to and tried by the zillah and city Judge, subject to an appeal to the Sudder dewanny adawlut.—*Govt. Ord. 15th Jan. 1834, No 7*

Charges of corruption, &c. against passive judges, to be tried by the zillah judge

## SECTION XVII.

• *Moonsiffs—Rules regarding their Examination.* •

*Rules for the Examination of Candidates for Moonsiffships, passed by the Right Honourable the Governor General in Council, on the 4th of August, 1840, and at subsequent dates.*

188. That at each three zillah stations in the North Western Provinces and four in Bengal to be selected by the Governments of those presidencies respectively, there be appointed a divi-

Divisional committees of examination, and their members



sional committee of examination, consisting ordinarily, besides such person or persons as the Government may think fit, of—1. The Commissioner of the division in which the station is situated. 2. The zillah Judge. 3. The Magistrate. 4. The Principal Sudder Ameen or Principal Sudder Ameens of the station.—*Rule 1, 4th Aug. 1840*

Applications for examination when to be sent and to what Judge

189. That all candidates for moonsifships be required to send in their applications for examination to a zillah Judge of the division within which they desire to be examined; at least two months before the examination to be held—but that no such applications shall be presented to the Judge who is a member of the examining committee.—*Rule 2, Ibid.*

The date of the receipt of an application for certificate of character, to be noted down

190. I am directed by the Court to request (with reference to the second clause of the Rules passed by Government on the 4th August, 1840,) that you will note the date of receipt on every application for a certificate of character, which may be presented to you by persons desirous of becoming candidates for the office of Moonsiff. The date may be conveniently entered immediately under the application at the head of the tabular form.—*Rule, 10th Dec. 1841.*

Z. Judge will certify that the candidate may be examined

191. That the zillah Judge, after making such enquiries as he may deem proper, in order to ascertain that nothing exists against the character of the applicant to render him unfit to enjoy the privilege of examination, shall certify on the face of the application, that the applicant may be examined.—*Rule 3, 4th Aug. 1840*

Examination to be held once a year

192. The Court are pleased to intimate, with the sanction of the Government, that the examination of candidates for the office of Moonsiff shall in future be held once a year, at its commencement.—*Rule, 23rd Dec. 1842*

Mode of conducting the examination

193. That the examination shall be conducted by the committee in such manner as shall from time to time be prescribed to them by the Sudder dewanny adawlut.—*Rule 5, 4th Aug. 1840.*

Examining committee will grant diplomas to the successful candidates

194. That at the conclusion of the examination, the committee shall grant to such candidates as they may deem proper, diplomas of fitness for employment as Moonsiffs, after such form as the Sudder court may prescribe, and at the same time forward duly certified lists of such candidates to the Sudder dewanny adawlut.—*Rule 6, Ibid.*

This diploma will be a title to recommend a candidate for a vacant moonsifship

195. That the possession of such diplomas shall entitle candidates on application, to be recommended by zillah Judges, and Commissioners for vacant moonsifships, and to be appointed to such vacant moonsifships by the Sudder dewanny adawlut before any candidates not possessing such diplomas.—*Rule 7, Ibid.*

Rule in case there be no application from a passed moonsiff when a vacancy occurs

196. That in case any zillah Judge shall, by reason of having received no application from a candidate with a diploma, nominate to the Sudder, to fill an existing vacancy, a candidate without a diploma, the Sudder court shall appoint to the vacancy any one from among the lists of passed candidates, who may be willing to accept the vacant appointment; but the Sudder court shall not delay the appointment for the purpose of making enquiry as to the willingness of any individual on the lists. On the contrary, if no application should be before them from any such person when the Judge's nomination may be taken into consideration by the Court, they shall, unless they be aware of other objections, appoint provisionally the candidate recommended by the zillah Judge, subject to his obtaining a diploma in due course under the following rule—*Rule 8, Ibid*

197. That in case any person not possessing a diploma, be hereafter appointed a Moonsiff under the last rule, he be required to present himself for examination to the divisional committee at the first examination held after the expiration of six months, from the date of his appointment, and that if he then fail in obtaining a diploma of fitness, his appointment be deemed vacant. — *Rule 9, Ibid.*

Person not having a diploma if appointed M. to be subsequently examined.

198. That after effect has been given to these rules, if the Judge of a district have good and sufficient grounds to believe, from any proceeding or other information officially before him, that any Moonsiff under his control not previously examined, is not sufficiently qualified to discharge in a proper manner the duties of his situation, he may, with the concurrence of the Commissioner, require such Moonsiff to present himself for examination before the divisional committee at their next meeting, and any Moonsiff, who being so required, may refuse to submit to examination or being examined may fail to obtain a diploma, shall forfeit his appointment, and shall not be reappointed to a moonsiffship until he obtain a diploma of fitness. — *Rule 10, Ibid.*

If the judge thinks an unpassed moonsiff incompetent, he may subject him to an examination

199. The Court are pleased to direct that Judge, who may require Moonsiffs to present themselves before the divisional committee for examination, in pursuance of the 10th section of the Rules passed by the Supreme Government, under date the 4th August, 1840, shall intimate the same to the committee at least fifteen days before their next half-yearly examination. *Rule, 28th June, 1842.*

Notice of fifteen days to be given to the examining committee

200. The examination to be partly vivâ voce and partly written answers to prepared questions. *Rule 1, 8th Dec. 1840*

Nature of the examination

201. The questions will be framed by the Court of Sadder dewanny adawlut, from the regulations and rules of practice, for the guidance of the Courts of civil justice, and will be forwarded by them to the examination committees, on the receipt of the prescribed reports, informing them that examinations are about to be held. — *Rule 2, Ibid*

Questions how to be framed by the S. D. A.

202. The questions to be answered by the candidates, without reference to books or other sources of information, in the presence of two members (one of them being the Judge, or Commissioner of the division, of the examining committee. The several members of the committee, however, shall examine the replies, and report on the eligibility of the candidates. Candidates will be at liberty to give their replies in whatever language they please, but it will be the duty of the committee to satisfy themselves, that every candidate who may be considered qualified in other respects for the situation of Moonsiff, possesses also a competent knowledge of the principal vernacular languages of the country. — *Rule 3, Ibid.*

Mode of examination

203. After the candidates shall have delivered their written replies to the questions, the papers of a Moonsiff's case, which has been decided on its merits, shall be read by a Mohurrir *seriatim*, the final decree excepted, to the several candidates, who shall then be required to record, in any language they may prefer, their opinions on the points at issue between the parties and the manner in which the suit ought to be decided, agreeably to the Regulations and the law of the parties. The opinions thus recorded shall be examined by the whole of the committee, to enable them to judge of the capacity and intelligence of the candidates. — *Rule 4, Ibid.*

Candidates will record their opinion on the points at issue in a moonsiff's case

204. On the close of the examination the replies of the successful candidates to the written questions shall be forwarded to the Sadder dewanny adawlut. — *Rule 5, Ibid.*

Replies to questions to be sent to S. D. A.

Oral examination.

205. The oral examination shall be conducted by a full meeting of the examining committee, who shall examine each candidate separately by questions from the Regulations relating to the constitution, extent of jurisdiction, powers, and course of procedure of the courts of the Native Judges.—*Rule 6, Ibid.*

Committee will give diplomas to successful candidates

206. At the conclusion of the examination, the committee shall, as directed in the 6th of the Government Rules, grant to such candidates as they may deem proper, diplomas of fitness for employment as Moonsiffs, according to the form furnished to them by the Sudder court, and at the same time forward duly certified lists of such successful candidates to the Sudder dewanny adawlut.—*Rule 7, Ibid.*

Made in which the mofussil committees will proceed regarding diplomas

207. Diplomas shall be granted by the mofussil committees only to those candidates who may answer correctly the whole of the questions forwarded by the Sudder dewanny adawlut. Should a mofussil committee be of opinion, that a candidate who may not have answered all the questions, is otherwise eligible to the office of Moonsiff, on any special grounds, they shall forward the written replies of such candidate, with a statement of the grounds on which they consider him entitled to a diploma, for the consideration of the presidency central committee, who will decide whether the candidate shall receive a diploma or otherwise. This rule does not apply to the presidency committee, whose powers will continue as before.—*Rule 8, Ibid.*

Case of equality of votes in the committee

208. When the members of any committee are equally divided in opinion as to the propriety of granting or withholding a diploma, such equality of votes shall be held to render the candidate ineligible.—*Rule 9, Ibid.*

No member shall vote for a relative

209. No member of any committee shall vote regarding any candidate to whom he may be in any way related.—*Rule 10, Ibid.*

2d examination allowed to the unsuccessful candidate.

210. Candidates who may be rejected at one sitting of a committee, shall be entitled, at the expiration of any period which the committee may fix upon, with reference to the degree of knowledge evinced by such candidates, when examined the first time, to appear a second time before them for examination provided, however, that such candidates shall renew their certificates from the zillah Judge previously to the second examination.—*Rule 11, Ibid.*

Rules regarding the judge's certificate

211. The zillah Judge, to whom application may be made for a certificate, shall, after making such enquiries as he may deem proper to ascertain that the applicant is a person of respectable connections, good character, and suitable attainments, certify on the face of the application, that the applicant may be examined. If, however, the enquiries made on these points prove unsatisfactory, or if the applicant be unable to produce credentials to his respectability, past conduct, and general qualifications, the Judge shall decline compliance with the application.—*Rule 12, Ibid.*

Form of judge's certificate

212. The certificate to be granted by the Judge shall be in the following terms :—" I do hereby certify that I have satisfied myself that the bearer of this certificate, A. B., is a man fully fitted, by respectability and good character, to fill the office of Moonsiff; and, from the enquiries I have made, I have every reason to believe that he is qualified, from his past conduct, and general information, to enjoy the privilege of examination for the office of Moonsiff."—*Rule 13, Ibid.*

Further rule designed to secure a higher standard of

213. By the third clause of the Rules for the examination of candidates for Moonsiffships, passed by the Governor General on the 4th August, 1840, the zillah Judges were required to cer-

tify as to the fitness of applicants to enjoy the privilege of examination. It appearing, however, that certificates of fitness were granted to applicants without sufficient discrimination, a particular form of certificate was enjoined by the 13th clause of the rules passed by the Governor of Bengal, under date the 20th April, 1841, and the points on which enquiry was expected to be made by the zillah Judges were indicated in the previous clause. The Court now deem it necessary to communicate to you the following remarks, which were submitted by them to Government, regarding the standard of character and acquirements to be required from those who offer themselves as candidates for the office of Moonsiff, and which you are requested to keep in view in disposing of applications for certificates: "The Court are persuaded that His Lordship will coincide with them as to the necessity of requiring a higher standard of character from future candidates than what the merely negative and equivocal terms of the certificate\* serve to indicate. They would suggest that the zillah Judges be required in future to make particular enquiries into the situation and circumstances in life of applicants, and to give certificates to none but those whom, from their general respectability and intelligence, they consider calculated to do honour to the office of Moonsiff, and eventually to the higher offices to which, under the recent rules a creditable discharge of the duties of a Moonsiff can alone render individuals eligible. A proper degree of care in this point, on the part of the zillah Judges, will obviate the necessity of the examining committee's paying attention to any thing but the acquirements and qualification of the candidates to which, in the opinion of the Court, those bodies should strictly confine themselves."—*Cir. Ord. 17th Dec. 1841.*

214 The certificate shall then be transmitted to the Sudder dewanny adawlut, who, if they be aware of no objection, shall certify as follows:—"The Sudder dewanny adawlut, having inspected this certificate, are aware of no objection to the examination of the candidate." (Signed) A. B., Registrar.—*Rule 13, 8th Dec. 1840.*

Confirmation of certificate by S. D. A.

215 When a candidate appears before a committee, if they shall be aware of objections to his examination, on the score of character, they shall refuse to proceed with his examination, and shall declare their objection in writing, on the face of the certificate, and transmit it to the Sudder dewanny adawlut, for such orders, or for such further enquiry, as the Sudder dewanny adawlut may think proper.—*Rule 14, Ibid.*

Committee may refuse to proceed with the examination if they are aware of objections to the candidate's character

216. I am directed by the Court to forward to you fifty copies of the form of application and certificate to be used when persons express an intention of presenting themselves before the committees for the examination of candidates for the office of Moonsiff, and desire to receive a certificate of their fitness to undergo examination. These forms, you will be pleased to observe, are to be filled up in English, and to be sent, when duly filled up to the Court, for transmission to the respective examination committees.

Form of application and certificate

*The application of \_\_\_\_\_, Inhabitant of \_\_\_\_\_*

Whereas I am desirous of becoming a candidate for the situation of Moonsiff, I request, that after making the necessary enquiries, you will grant me a certificate prescribed by the Rules for the examination of candidates, dated the 4th August, 1840, and published in the Gazette of the 15th idem.

\* The rescinded form of certificate is alluded to

1	2	3	4	5	6	7	8
Name of the applicant and that of his father	Age	Religion and caste	Family residence, viz town or village, parsonage and zillah	Statement of past employment in the service of Government	Statement of landed or other property belonging to the nominee and where situated	Statement of whether the applicant is a debtor or creditor of other parties, and also, the place of residence of his debtor or creditor	Certificate of the Judge.
							<p>I do hereby certify, that I have satisfied myself that the bearer of this certificate — is a man fully fitted by respectability &amp; good character, to fill the office of Moonsiff, and from enquiries I have made, I have every reason to believe that he is qualified from his past conduct and general information, to enjoy the privilege of examination for the office of Moonsiff</p> <p style="text-align: right;">— Judge.</p>
Zillah							
The	18						Remarks of the Subdar Court.

—*Civ. Ord. 19th April, 1841*

Chief Magistrate of Calcutta and certain of the Moonsiffs may grant certificates

217 The Chief Magistrate of Calcutta and the Judges of Patna, Moorsshedabad, Dacca and the 24 Pargannahs, are authorized to grant certificates to candidates for moonsiffships, in the manner in which such certificates have heretofore been granted by the other authorities.—*Rule 1, 20th May 1842.*

Principals of colleges and schools may grant them

218 The Principals of the several schools and colleges under the control of the Council of Education, are in like manner authorized to grant certificates to *bona fide* students of their respective schools and colleges, such certificates to be countersigned by the Judge of the zillah in which the school or college may be situated, after that officer shall have satisfied himself that the candidate is a fit person to be admitted to examination.—*Rule 2, Ibid*—Where there is no Principal, the Secretary to the local committee should grant the certificates referred to in the above paragraph.—*Civ. Council of Education, 18th May 1842.*

Additional rules for certificates

219. In addition to the usual remarks in the last column, all certificates shall bear on them the result of the Judge's enquiries into the character and respectability of the candidates, together with any particulars relative to their family and connections which may seem worthy of notice.—*Rule 3, 20th May 1842.*

220. No certificates are to be granted but to persons who may be inhabitants of or employed within the jurisdiction of the officer granting it.—*Rule 4, Ibid.*

221 Persons under the age of 21, are not eligible to examination.—*Rule 5, Ibid.*

222. In renewing the certificates of persons who have already undergone examination, the

Judges are to mention in such certificates the number of times the candidates have been examined, with reference to which the Court will decide whether they will admit the candidate to re-examination.—*Rule 6, Ibid.*

223. No certificates are to be granted, as at present, later than two months before the half-yearly examinations, one month previous to which the Judges of Patna, Moorshedabad, Dacca, and the 24-Pargunnahs will report to the Court the number of candidates whose names are registered for examination.—*Rule 7, Ibid.*

Period for giving certificates

224. Individuals whose names are at the head of the list of candidates who have received diplomas, shall, on refusal to proceed to any station to which they may be appointed, have their names placed at the bottom of the list, and wait their turn accordingly.—*Rule 8, Ibid.*

Penalty for refusing to go to a station to which the successful candidate may be appointed

### SECTION XVIII

#### *Moonsiffs—their Appointment and Jurisdiction.*

225. In modification of the provisions contained in Sections 6 and 7, Regulation 23, 1814, and Section 2, Regulation 2, 1821, the Judges of the Zillah and City courts, in conjunction with the Commissioner of Revenue and Circuit, shall revise the existing establishment of Moonsiffs in the zillahs and cities to which this Regulation may be extended, and the selection and number of those officers shall be regulated in such manner as the Governor General in Council may be pleased to direct, the office being open to Natives of India [*vide Rule 159 of this Chapter.*] of any class or religious persuasion.—*Reg. 5, 1831, Sect. 3.*

Rules for the nomination of moonsiffs.

226. The zillah Judges will nominate as at present, through the Commissioner of the division, to the Court of Sadler dewanny adawlut, all individuals proposed for the situation of Moonsiff.—*Govt. Ord. 30th July 1836, Sect. 1.*

Zillah judge will nominate moonsiff.

227. With the sanction of Government, the Court of Sadler dewanny adawlut, for the Lower Provinces, are pleased to notify, that law officers of Zillah courts will be, in future, considered eligible to moonsiffships, and, in cases of peculiar merit, capacity, and long previous experience, to the office of Sadler Ameen, without undergoing the ordeal of an examination.—*Cir. Ord. 23d Aug. 1844, par. 1.*

Law officers eligible to moonsiffships without examination.

228. The Judges of the several zillahs and cities shall on the receipt of this Regulation prepare and submit to the Provincial court a new establishment of Moonsiffs, whose local jurisdictions shall be so arranged as to correspond exactly with those of the thanmahs or local police jurisdictions. They shall at the same time report to the Provincial court the name of the town or village in each jurisdiction, which may be most central, or otherwise most conveniently adapted for the establishment of each Moonsiff's catcherry.—*Reg. 23, 1814, Sect. 6, Cl. 1.*

New establishment of moonsiffs whose local jurisdictions are to correspond with those of the thanmahs, to be submitted to the provincial courts by the zillah & city judges

229. The jurisdiction of the Moonsiffs shall have the same local denomination as that of the corresponding police jurisdiction.—*Ibid. Cl. 2.*

Jurisdiction of moonsiffs to have the same local denomination as corresponding police jurisdiction.

230. The Provincial courts [the Sadler courts] are empowered to include two or more entire police jurisdictions within that of one Moonsiff, and to abolish any of those of

Power vested in provincial courts regarding the local ju-

jurisdiction of moonsiffs.

ties whenever local or special circumstances may in their judgment render it expedient : they are further at all times authorized to cause the entcherry of a Moonsiff to be removed from the town or village in which it may be held to any other town or village within the limits of the same Moonsiff's jurisdiction, which may appear more convenient.—*Ibid.* Sect. 7

Power exercised by S. D. A. of reducing the number of moonsiffships.

231. The Court have already in several instances exercised the power heretofore vested in them of reducing the number of Moonsiffs. To enable them however, to provide for such of those individuals, who may be considered deserving, in the districts in which their services may be required, they request that you will immediately submit, in the accompanying form, a descriptive list of all Moonsiffs appointed under Regulation 5, 1831, who have lost their situations through no fault of their own, but in consequence of the abolition of their moonsiffships. You will be pleased to state distinctly in the proper column your opinion of the qualifications, character, and past conduct of each of the individuals, and forward the statement through the Commissioner, that he may add his own opinion on the subject.—*Cir. Ord. Cal. and West. C.* 21st Nov. 1834

Provincial courts empowered to increase the number of moonsiffs, on the recommendation of the city or zillah Judge.

232. If the civil business within the limits of a thannah cannot conveniently be discharged by one Moonsiff, as prescribed by Section 6, Regulation 23, 1814, the Provincial courts [the sudder courts] are hereby authorized, on the recommendation of the city or zillah Judge, to augment, from time to time, the number of those officers as circumstances may require.—*Reg. 2, 1821. Sect. 2.*

Judge cannot or moonsiff transact the business of moonsiffs.

233. I am directed by the Court to acknowledge the receipt of your letter of the 10th instant, and in reply to inform you that the Court do not consider you [the zillah Judge] competent to remove a Moonsiff from one jurisdiction to another without a reference, through the Commissioner, to them.—*Com. 832, Cal. C. 27th Sept. 1833, West. C. 18th Oct. 1833.*

Seals of moonsiffs.

234. In pursuance of the orders of Government, I am directed by the Court to request that you will cause brass seals, one inch and a half square, with the inscription in Persian and Bengalee or Nagree, according to the current language of the district, to be prepared and delivered to the Moonsiffs in your jurisdiction, and charge the expense on your contingent bill.—*Cir. Ord. Cal. C. 18th Jan. 1836, West. C. 18th March 1836.*

Inscription of the seal.

235. In modification of the Circular order, under date in the Lower Provinces the 8th January, and in the Western Provinces the 18th March last, I am directed to request that in the Persian, Bengalee, or Nagree inscription on the seals which you were required by that order to prepare for the several Moonsiffs of your district, you will omit the word "thannah," and merely insert the name of the sudder station at which the Moonsiffs ordinarily reside, or by which their moonsiffships are respectively distinguished.—*Cir. Ord. Cal. and West. C. 15th April 1836.*

Moonsiffs' honor to be paid by fees.

236. Such parts of Regulation 23, 1814, and of Regulation 2, 1821, or of any other Regulations in force as authorize Moonsiffs to receive, as a compensation for their trouble in the trial of suits, the amount of the institution fee, or stamp duty substituted for such fee, are rescinded, and shall have no operation in the zillah or city to which this Regulation may be extended from the date on which it may be directed to have effect in such zillah or city.—*Reg. 5, 1831, Sect. 12, Cl. 1.*

237. From the date on which this Regulation shall be directed to take effect in any zillah or city, the Moonsiffs shall, in lieu of the fees and compensation above mentioned, receive from Government such monthly allowances as may be fixed by the order of the Governor General in Council.—*Ibid.* Cl. 2.

Their monthly allowances will be fixed by the Governor General in Council

238. The Moonsiff appointed under the new rules will of course only be entitled to their salaries from the day on which they may take charge of their respective offices.—*Cir. Ord. Cal. and West. C. 20th July 1832.*

Salaries of moonsiffs begin with their taking charge

239. No person can legally exercise the judicial functions of Moonsiff until his appointment has been sanctioned by the Court of Sudder dewanny adawlut. Any decisions or orders passed in violation of this rule must be held to be null and void.—*Ca. Ord. Cal. and West. C. 6th Nov. 1835, par. 1.*

Moonsiff cannot exercise his functions till his appointment is sanctioned by S. D. A.

240. Every person who may in future be appointed to the office of Moonsiff, will be furnished by the Judge with a sunnud drawn up according to the form No. 1 of the Appendix to this Regulation, and previously to entering upon the duties of his office, he shall take and subscribe an oath according to the form prescribed in No. 2 of the Appendix. The Judge however is empowered in all cases in which he may deem it expedient, to exempt such Moonsiff from taking the oath, and to cause him to subscribe a solemn declaration to the same effect.—*Reg. 23, 1814, Sect. 11*. [Since the enactment of Regulation, 1851, the Moonsiffs have usually received their sunnuds from the sudder court.]

Persons hereafter appointed to the office of moonsiff to be furnished with a sunnud and to take and subscribe an oath or solemn declaration according to prescribed form

*Form of oath to be administered or solemn declaration to be signed by the Moonsiff*

A B., appointed to the office of Moonsiff of ———, do solemnly swear, that in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment, without partiality, favour or affection, that I will not, directly or indirectly, receive, or knowingly allow any other person to receive, any money, effects or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute. I will strictly adhere to all the rules prescribed for my guidance, and I will in all respects, truly and faithfully execute the trust reposed in me.—*Appendix to Reg. 23, 1814, No. 2.*

241. Whenever a sunnud may be granted to a Moonsiff under the preceding section, a copy of it under the official seal and signature of the Judge shall also be delivered to him, in order that it may remain permanently affixed in some conspicuous place in his cutcherry.—*Reg. 23, 1814, Sect. 12.*

Copy of the sunnud to be furnished to moonsiffs and to be affixed in their cutcherries

[The following Circular Order applies exclusively to the Courts under the jurisdiction of the Western Court of Sudder Dewanny.]

242. It having been brought to the notice of the Court that the attendance of some of the Moonsiffs at their offices is far from regular, and that in some instances it has been found that no cases have been decided by those officers for several days consecutively without any satisfactory explanation being furnished of the cause, I am desired, therefore, to request your particular attention to the subject, and to acquaint you that with a view to put a stop to so objectionable a practice the Court are pleased to direct the adoption, in every district under their control, of the

Statement of duty work disposed of by moonsiff



accompanying form of statement showing the daily quantity of work disposed of by each of the officers in question, which will in future, accompany their monthly returns to your office.—*Cir. Ord. West. C. 14th Oct. 1837, par. 1.*

Revision of the statement by judge

243. On the breaking up of their courts the Moonsiffs will cause the number of cases, regular as well as miscellaneous, brought before or decided by them during the day, to be entered in the prescribed statement under the proper headings, to which they will immediately affix their signature, and on the receipt of the statement in your office the Court request that you will carefully revise it and, should the absence of any Moonsiff from his cutcherry on any particular day not be satisfactorily accounted for, or the quantity of work disposed of appear unusually small, that you will call for explanation and pass such orders in the matter as may seem to you proper, forwarding an abstract of the same in your monthly civil reports in the column of remarks.—*Ibid. par. 2*

Repeals all regulations giving any persons authority by virtue of office to sell property for arrears of rent

244. It is hereby enacted, that from the first day of May next ensuing, after the passing of this Act, all Regulations and parts of Regulations of the Bengal code, which give to any persons or class of persons authority by virtue of any office held by them, to sell property distrained for the recovery of arrears of rent, shall, so far as they give such authority be repealed.—*Act I. 1839, Sect. 1.*

Moonsiffs cannot act as agent for selling distrained property

245. With reference to the circular of the Sudder dewanny adawlut, dated 3rd June, 1813, which authorizes the employment of the Native Commissioners for the sale of distrained property as agents on the part of zemindars, in distraining the property of defaulting tenants, I am directed to point out that under the operation of Act I. of 1839, withdrawing from the Moonsiffs the power to sell distrained property, and under the altered state of things generally caused by the present system, those officers can no longer exercise the authority contemplated by the circular, and you are accordingly directed to prohibit the Moonsiffs under your jurisdiction from acting in the capacity of agents under the circular quoted, considering that part of it which confers such powers as cancelled.—*Cir. Ord. 24th Jan. 1840*

## SECTION XIV.

### *Moonsiffs—Civil Actions and Criminal Prosecution.*

Moonsiffs may be sued for corruption in the civil courts and are liable to discretionary costs and damages

246. Moonsiffs shall be liable to an action in the Civil court for corruption in the discharge of their trust, or for extortion, or for any oppressive or unwarranted act of authority, and upon proof of the charge to the satisfaction of the Judge, he shall cause the offender to pay such damages and costs to the party injured as may appear to be equitable.—*Reg. 23, 1814, Sect. 10, Cl. 1.*

Moonsiffs may be prosecuted criminally in certain cases and are liable to fine and imprisonment on conviction

247. Moonsiffs shall also be liable to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty, and on conviction before the Court of circuit shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no Moonsiff shall be liable to be prosecuted for want of form or for error in his proceedings or judgments, nor shall any process be issued against a Moonsiff, who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the Judge shall be previously sa-

Process not to be issued against moonsiffs without previous enquiry into the charges

tified by sufficient evidence, that there is reason to believe the charge to be well founded.

—*Ibid*, Cl. 2.

248. I am directed to acknowledge the receipt of your letter of the 11th ultimo and its enclosures, and in reply to inform you that the Court are of opinion, with reference to Clause 2, Section 10, Regulation 23, 1814, that a charge of bribery, corruption or extortion against a Moonsiff is cognizable in the first instance only by the Civil Judge, who, after the requisite preliminary enquiry, will either give or refuse his assent to a criminal prosecution, which, in the former case, should be conducted by the complainant before, and be disposed of by, the Magistrate as in any other case of misdemeanour.—*Con* 781, *Cal. C.* 12th April 1833, *West. C.* 17th May 1833.

Charges for extortion or extortion against moon-siff cognizable only by zillah judge who will permit or not a criminal prosecution

249. The Court have reason to believe, that various complaints of a vague and unfounded description are too frequently preferred against Moonsiffs, with no other object than to throw suspicion and discredit on the character of those functionaries, who may have rendered themselves, no matter how, obnoxious; and that complainants having thus effected their purpose, designedly fail to attend and prosecute their charges to a conclusion. The interests of Government on the one hand, and justice to the accused functionary on the other, demand, that he should be allowed an opportunity of disproving, or defending himself from the imputation of official misconduct, and that the community generally should be deterred from bringing false and malicious complaints against such officers; and the Court are pleased, accordingly, to direct the attention of the several zillah and city Judges to the principle enunciated in Section 7, Act XXVI. of 1839, which principle (notwithstanding the restriction of the law cited to investigation of matters implicating the public conduct of officers, not removable without the sanction of Government) is one of general application and beneficial tendency, and may be extended to enquiries into the truth of similar matters involving the character of Moonsiffs. It is the desire of the Court, therefore, that in all instances of complaints being preferred against Moonsiffs, the Judge, before whom such complaint may be laid, shall use his discretion in demanding security from the person bringing the accusation, to be in attendance until the investigation thereof be completed, whenever, on its primary institution, there shall appear reasonable grounds for supposing that the complainant is actuated by sinister and malicious motives.—*Cur. Ord.* 8th Sept. 1843.

When complaints are made against a moon-siff, the judge may demand security from the accuser to be present at the investigation, when he appears to be actuated by improper motives

250. The Court direct me to add, that this is not to be considered as barring the right of the Judge to direct the vakeel of Government to prefer a charge of bribery, &c. against a Moonsiff, and to conduct the criminal prosecution on the part of Government, whenever he may deem this measure expedient for the ends of justice.—*Con* 781, *Cal. C.* 12th April 1833, *West. C.* 17th May 1833.

Judge may order the Government vakeel to prosecute moon-siffs for bribery

251. I am directed to communicate to you, in reply to your letter of the 14th November last, the opinion of the Court, that after you had enquired into the alleged misdemeanours and other criminal acts, charged against the Moonsiff, you ought, provided you saw reason to believe that the charges were well founded, (vide Section 10, Regulation 23, of 1814,) to have made over the case to the Magistrate, to be disposed of according to law, directing the Government pleader to prosecute on the part of Government.—*Con* 1069, *Cal. and West. C.* 27th Jan. 1837.

When the moon-siff is charged with criminal acts, the judge, if they appear well founded, will transfer the case to the magistrate

252. The provisions of Section 8, Regulation 40, 1793, and other Regulations, which declare Native Commissioners, Sudder Amceens and Moonsiffs liable to prosecution in the Civil

S A and moon-siffs may be prosecuted

both in the civil and criminal courts court for corruption, or any unwarranted and oppressive act of authority, are not meant to prohibit a criminal prosecution, in cases where the nature and circumstances of the case appear to call for it.—*Con. Gt.* 11th Aug. 1810.

## SECTION XX

*Officiating Moonsiffs.*

Judge may depute a person to take charge of the office of Moonsiff on his removal by death or other cause. Powers of the acting Moonsiff.

253. Whenever on the death, absence on leave, resignation, or suspension of a Moonsiff, the Judge shall be of opinion that inconvenience will be felt from the want of a person to perform the functions of Moonsiff during the interval required for the selection of a fit successor, and for the sanction of this Court to his nomination, he shall be at liberty to depute a person to take charge of the current duties of the office. The person so appointed shall confine himself to the exercise of such part of the powers of Moonsiff as may be indispensably necessary for the immediate execution of processes or orders of the Judge and superior courts, and will not admit of delay. He shall also be authorized to receive any new civil suits of whatever description, which may be instituted according to the Regulations, to issue notice to or summon the defendant, and receive his answer, as well as any written documents or lists of witnesses which may be offered by the parties or their vakeels, in pursuance of orders passed previously by the Moonsiff, but he shall exercise no other power in such suits, unless in any instance there shall appear to be urgent reason to take the evidence of any witness or witnesses, in which case he will without delay report the circumstance to the Judge, who will, if he deem it proper, direct him to take the depositions of such witness or witnesses under the general rules prescribed for the conduct of the Moonsiff.—*Cir. Ord. Cal. and West. C.* 6th Nov. 1835, par. 2.

Function of the Moonsiff.

254. He is likewise empowered to receive any sums which parties may be desirous of depositing on account of the execution of decrees, and to pay to parties or decree-holders any money, for the payment of which the Judge or other competent authority may have already given orders. He shall also be empowered to conduct, in conformity to the Regulations, any summary enquiries which he may be specially required to make by the Judge or other competent authority.—*Ibid.*, par. 3.

Salary of the acting Moonsiff.

255. The person so appointed shall be entitled to receive the moiety of the Moonsiff's salary, authorized by paragraph 7 of the Rules passed by Government on the 29th January, 1833. (published in the Calcutta Gazette of the 2d February following) to be paid to a person who officiates for a Moonsiff.—*Ibid.*, par. 4. [*See also Section XXVIII of this Chapter.*]

Salary of the officer in charge.

256. *Letter from the Sudder Court to the Govt. of Bengal*—I am directed by the Court to request that you will bring to the notice of His Honour the Deputy Governor, that under the rules cited in the margin,\* an officer in charge of the current duties of a Moonsiff's court gets half the Moonsiff's salary, and an officer acting with full powers in the absence of a Moonsiff on leave, or during his suspension gets the same, which appears to the Court a very unequal ratio of payment, with respect to the labour and responsibility of the two appointments. They would accordingly suggest that while the pay of the officiating Moonsiff be left at the present amount, viz. one half the full salary, or 50 Rupees per month, the remuneration of the officer in charge merely of the current duties should be fixed at a quarter of the salary of a Moonsiff of the

\* Orders of Government, 29th Jan. 1833, par. 6; Court's Cir. Ord. 156, dated 6th Nov. 1835, par. 4.

lower grade or 25 Rupees per mensem, which the Court consider to be an ample allowance.—The Court do not recommend any alteration of the present practice with regard to Principal Sudder Ameens and Sudder Ameens, as the persons who officiate for them during temporary absence, are already in judicial employ as Sudder Ameens in the one case, and as Moonsiffs in the other, and are not therefore in the same predicament as those who officiate either with full or limited powers in the courts of the Moonsiffs.—*Reply*.—I am directed to acknowledge the receipt of your letter of the 7th instant, and in reply to request you will inform the Court that the Right Honourable the Governor of Bengal concurs with them in considering it would be expedient to reduce the remuneration allowed to persons in charge of the current duties of Moonsiffs' offices from Company's Rupees 50 to Company's Rupees 25 per mensem.—*Cir. Ord. 18th Feb 1810*

## SECTION XXI

### *Rate of Travelling of Moonsiffs.*

257 The Court are pleased to fix the general rate of progress at 5 kos (or ten miles) a day, Sunday excepted, with an allowance, in addition of one week, to afford time for the necessary arrangements to be made consequent on removal, and as Natives usually travel a daily distance considerably in excess to this rate, the allowance thus made is considered amply sufficient.—*Cir. Ord. 15th May 1810, par. 2. [Modified by Rule 10, of the Government Notification of 24th July 1816, vide Section XXVIII. of this Chapter.]*

● Rate of travelling fixed at five kos a day and one week allowed for preparations

258 Such period of one week, with the addition of a certain time, calculated at the above rate, will thus constitute the entire interval allowed for transit, in the event of exceeding which, the functionary will be considered as absent without leave, and unentitled to any salary for the term of such excess.—*Ibid, par. 3.*

If it should exceed one week, and the duty rate be exceeded there will be no salary for the excess

259. Should an officer so transferred obtain leave for any additional period over and above the licensed term, from the presiding authority in the district to which he may be proceeding, he will be subject to the usual deduction of salary for the time exceeding that allowed for transit.—*Ibid par. 4*

Any additional leave will entail deduction of salary

## SECTION XXII

### *Unconvenanted Judges—Disqualification, Suspension, or Dismissal.*

260 In modification of the existing rules regarding the removal of Sudder Ameens, it is hereby enacted that it shall not be necessary, in all cases, to require full and legal proof of disqualification, but that whenever, a Zillah or city Judge shall have reason to believe that any Principal or other Sudder Ameen within his jurisdiction is disqualified by neglect of duty, incapacity, notorious corruption, or other gross misconduct, he shall state the grounds of his opinion to the Commissioner of Revenue and Circuit for the division, and provided that officer concur with him in opinion, they shall jointly submit a report thereof for the consideration and orders of the Governor General in Council through the Secretary to Government in the Judicial department: and it shall be competent to the Governor General in Council, should he be of opinion that sufficient grounds exist, to direct the immediate removal of such Principal or other Sudder Ameen, provided however, that no

Rules regarding the dismissal of S. A. and P. S. A.

Principal or other Sudder Ameen shall be removed from office, without the sanction of the Governor General in Council.—*Reg. 5, 1831, Sect. 26, Cl. 1.*

Rules regarding the  
disposal of moonsiffs.

261. The above rules are hereby declared applicable to the Moonsiffs, who may be appointed under this Regulation, except that any report suggesting the removal of any officer of that class shall be made to the Sudder dewanny adawlut, who shall be competent to exercise the powers declared to belong to the Governor General in Council by the preceding clause, with respect to the Sudder Ameen and Principal Sudder Ameen.—*Ibid, Cl. 2.*

Judge competent to  
suspend P. S. A.,  
S. A., or Moonsiff,  
against the opinion of  
the Commissioner of  
the division.

262. Provided also that it shall be competent to a Judge of a Zillah or City court, whenever he may see urgent necessity for so doing, to suspend any Principal Sudder Ameen, Sudder Ameen, or Moonsiff, within his jurisdiction, without any previous communication with the Commissioner of the division; and in all cases in which the Commissioner of the division may dissent from the Judge as to the propriety of removing any of the officers above named, it shall be competent to the Judge to submit his own opinion to that effect to the Governor General in Council, or the Court of Sudder dewanny adawlut, as the case may be; such report, however, to be accompanied by a copy of the dissent which the Commissioner may deem it necessary to record on the occasion.—*Ibid, Cl. 3.*

Commissioner of  
the division or District  
Court may dissent  
from the Judge's  
opinion, and may  
submit his own  
opinion to the  
Governor General  
or the Court of  
Sudder dewanny  
adawlut.

263. Provided also that it shall be competent to any Commissioner of Revenue and Circuit to recommend, on grounds assigned, the removal of any Moonsiff, Sudder Ameen, or Principal Sudder Ameen, but every such recommendation shall be previously submitted through the Judge of the zillah or city, whose assent or dissent shall accompany the recommendation to the Court of Sudder dewanny adawlut, or the Governor General in Council, as the case may be.—*Ibid, Cl. 4.*

Commissioner has  
not the power to sus-  
pend an overcom-  
mitted Judge.

264. The respective powers of Judges and Commissioners, regarding the suspension of Moonsiffs, are distinctly laid down in clauses 3 and 4, Section 26, Regulation *a.*, 1831—clause 3 expressly vests the Judge with the authority to suspend on urgent necessity; clause 4 of the same section also defines the power of a Commissioner to extend to recommending the removal of a Moonsiff with the proviso that the recommendation shall be submitted to the Sudder dewanny adawlut through the Judge; as the Regulations do not therefore vest the Commissioner with the power to suspend, the Court are of opinion that the Commissioner in the case in question exceeded his powers, and should the Presidency court concur, this opinion will be communicated to that officer and to the Session Judge. The Presidency court, on the 7th November, 1834, concurred in this construction.—*Con. 908, West. C. 10th Oct. 1834.*

P. S. A. and S. A.  
and M. should be re-  
moved as soon as  
their disqualification  
is known.

265. It is of the greatest consequence to the attainment of the objects contemplated by the enactment of Regulation 5, 1831, that the persons filling the offices of Principal Sudder Ameen, Sudder Ameen, and Moonsiff, should be removed immediately after their disqualification by neglect of duty, incapacity, corruption, or other misconduct is known, and His Lordship in Council is of opinion that such disqualification cannot be concealed from both the Judge and the Commissioner, if they adopt the ordinary means within their power of ascertaining the sense of the community of the character and conduct of every individual filling these offices.—*Cir. Ord. Cal. and West. C. 14th June 1833, par. 7.*

Judge on suspend-  
ing a M. will make a  
special report.

266. Whenever a Judge has occasion to suspend a Moonsiff, he will make a special report of the matter for the information of the Court within ten days, and on the conclusion of the

enquiry he will report the result. If the Moonsiff remain under suspension at the end of the month, the reasons which have prevented the conclusion of the enquiry will be detailed in the civil statement of regular suits for that month, and each succeeding month, till he is finally removed or restored to office, which fact will be noticed in the statement of the month in which it may occur, besides a special report of the case being furnished to the Court of Sudder dewanny adawlut.—*Civ. Ord. Cal. and West. C. 6th Nov. 1835, par. 5.*

267. With the sanction of Government, I am directed by the Court to inform you, that no Moonsiff, Sudder Ameen, or Principal Sudder Ameen, who may be suspended from office, should suffer any deduction from his salary if restored to his situation. His *locum tenens* during his suspension will draw the allowance received under the Rules of the 29th January, 1833, by officers officiating for absentees; and this amount will be an extra charge upon Government.—*Civ. Ord. 12th Feb. 1841, par. 1.*

Salary of unconvicted judges, not to be deducted during suspension, if subsequently restored. Allowance of *locum tenens*.

268. If the suspended Moonsiff, Sudder Ameen, or Principal Sudder Ameen, be dismissed from office, the whole of the salary should be allowed to the person who may have actually performed the duties of the office from the date of his taking charge.—*Ibid, par. 2.*

The whole of the salary to go to the *locum tenens* if the suspended judge be dismissed.

## SECTION XXIII

### Unconvicted Judges—Salary and Allowances

269. Under the discretion vested in Government by clause 2, of Section 12, Regulation 5, 1831, the monthly allowance to Moonsiffs appointed under Regulation 5, 1831, is fixed at Sonat Rupees 100 per mensem for establishment, and 10 Sonat Rupees per mensem for stationery.—*Govt. Ord. 1st Nov. 1841.*

Salary of Moonsiffs and allowance for stationery.

270. The monthly salary of Sudder Ameen is fixed at Sonat Rupees 250 per mensem, and 50 Sonat Rupees per mensem for establishment and stationery.—*Ibid.*

Salary of S. A. and allowance for establishment.

271. Under the discretion vested in Government by Clause 3, Section 17, Regulation 5, 1831, the monthly salary of Principal Sudder Ameen is fixed at Sonat Rupees 400 per mensem, and Sonat Rupees 100 per mensem for establishment and stationery.—*Ibid.*

Salary of P. S. A. and allowance for his establishment.

[The three rules given above were subsequently modified by the following rules.]

272. In modification of the resolution dated the 1st Nov. 1831, which fixes the monthly personal and office establishment allowances of the subordinate judicial functionaries appointed under Regulation 5, of 1831, of the Bengal code, the Right Honourable the Governor General of India in Council is pleased to direct that the personal allowances of one-fourth of the existing Principal Sudder Ameen, and of one-fourth of the existing Moonsiffs be raised in the proportions specified in the margin. The individuals receiving these superior allowances respective-

Salary of one-fourth of the P. S. A. and M. increased to 600 Rs. and 150 Rs. per mensem.

	Present Allowance	Future Allowance
P. S. Ameen - Personal Allowance, 400	400	600
Moonsiffs - Ditto, 100	100	150

ly, to be selected by the Government according to the merits and services on the report of the zillah or city Judge, conformed by the

Court of Sudder dewanny adawlut.—*Govt. Ord. 2d Oct., 1837.*

Establishment and stationery allowance of P. S. A. and S. A. and M., increased; three-fourths of the M. to receive 100 Rs. monthly salary.

273. His Lordship in Council is further pleased to augment the allowances granted to the

	Present Allowance.	Future Allowance.
P. S. Ameens. - For establishment, and stationery, . . .	100 ...	150
Sudder Ameens - Ditto ditto, . . .	50	50
Moonsiffs - Ditto ditto, . . .	10 ...	30

\* A. B. This allowance of 10 Rs. per mensem was for stationery only. The salary of 100 Rs. per mensem formerly granted to Moonsiffs, was intended to provide for their establishment also.

Principal Sudder Ameens, Sudder Ameens, and Moonsiffs on account of establishment and stationery as specified in the margin, and to fix the net personal salary of the Moonsiffs, not promoted to the superior class authorized by article 1 of this Notification at Rs. 100 per mensem — *Ibid.*

Their salaries commence from the date of taking charge of their offices.

274. The allowances of all Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, will commence from the date on which they may take charge of their respective appointments. — *Govt. Ord. 29th Jan. 1833.*

## SECTION XXIV.

### *Unauthorised Judges—borrowing or lending money within their Jurisdiction.*

P. S. A. and S. A. and M. forbidden, on pain of dismissal, to employ any creditor or his surety, or any relative or debtor, or to give a debt to any person in their city or division.

275. The Principal Sudder Ameens, Sudder Ameens and Moonsiffs are hereby prohibited under pain of dismissal from office, from employing or retaining on their establishments any person being their private creditor, or any relative, dependant, or surety of such creditor, and from borrowing money from, or in any way incurring debt to any zemindar, taloodar, ryot, or other person possessing real property, or residing in, or having a commercial establishment within the city, district or division to which their authority may extend — *Govt. Ord. 14th July 1834*

Any such officer, already thus indebted, shall make it known to the Judge, on pain of dismissal.

276. If any Principal Sudder Ameen or Moonsiff who may be now in debt shall, at the expiration of one year from the publication of this order, be still indebted to any person from whom it would at such period be illegal for him to borrow under the above rule, it shall be incumbent on such officer to make known the circumstance to the Zillah or city Judge, to whom he may be subordinate, for communication to the Government, if the officer be a Principal Sudder Ameen, Sudder Ameen, and to the Sudder dewanny adawlut, if the officer be a Moonsiff, and in the event of intimation not being so given the same penalty shall attach to the said officer as if the debt had been incurred subsequent to the publication of this order. — *Ibid.*

Any candidate for the office, if thus indebted, shall make it known in his application, on pain of dismissal when it is discovered.

277. In like manner, if any person who may be a candidate for the office of Principal Sudder Ameen, Sudder Ameen or Moonsiff, shall, at the time of applying for such office, be indebted to any person with whom it would be illegal for him to contract a loan while holding it, it shall be incumbent on such person in preferring his application to make known the circumstance to the Judge of the city or district, for communication to superior authority as before stated; and failing to do so, he shall, in the event of his being appointed to the said office be subject to the same penalty, as if the debt had been contracted subsequently to his appointment. — *Ibid.*

278. The Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, and the Mahomedan and Hindoo Law Officers of the Zillah and City courts, and of the Sudder dewanny adawlut under this presidency, are hereby prohibited, under pain of dismissal from office, from being engaged in any trading speculations — *Govt. Ord. 29th Dec. 1835.*

Rule with regard to P. S. A. S. A. and M. who may be engaged in trading speculations, or any such speculations shall devolve on him by inheritance, it

279. If any Principal Sudder Ameen, or other of the officers abovementioned, shall be now engaged in trading speculations, or any such speculations shall devolve on him by inheritance, it

shall be incumbent on him, within one month, to make known the circumstance to the zillah or city Judge, or to the Register of the Court of Sudder dewanny adawlut, and to terminate his connection with such transactions at the earliest practicable period. Should he be unable to do so within one year, he shall either resign his situation or submit a report of the circumstances of the case to the Judge or Register, who will forward it to the Government or Court of Sudder dewanny adawlut, as the confirmation of the officer may be vested in one or other of these authorities; with his own opinion as to the propriety of allowing the officer a further period for the purpose of bringing his transactions to a close. If any of the officers abovementioned shall fail to conform to the above rule, the same penalty shall attach to him, as if he had engaged in trade subsequent to the publication of this order.—*Ibid.*

250. Candidates for any of the offices abovementioned shall certify in their applications that they are not engaged in any trading speculation, and in the event of their being appointed, and of its being subsequently discovered that they were so engaged at the time of making their application, they shall be liable to be dismissed from office.—*Ibid.*

251. The Court are pleased to direct, with the sanction of the Government that the rule in Section 2 Regulation 38, 1793, prohibiting public officers from lending money to persons within their jurisdiction, be extended to all uncorrupted judicial officers.—*Civ. Ord. 25th Oct. 1811.*

## SECTION XXV.

### *Uncorrupted Judges—Possession of Landed Property.*

252. In future, on the appointment of any Native officer on your establishment, whether the situation to which he may be nominated be of a judicial or ministerial nature, or connected with the police department, you will require from him a schedule of any landed property of which he may at the time be possessed, and at the same time explain to him that should he subsequently make further acquisitions of the same description, it will be incumbent on him to communicate the circumstance to you within one month from the date of the acquisition; should he fail to do so, or should it appear that he has wilfully omitted in his schedule any landed property belonging to him at the time of filing it, he will be liable to dismissal from office.—*Civ. Ord. Cal. and West. C. 27th Feb. 1835, par. 2.*

253. All such schedules, which may be filed in your court, you will immediately transmit to the office of the Collector of the district for record.—*Ibid, par. 3.*

254. You will also consider the above rule applicable to present incumbents, and will accordingly call on the officers now attached to your establishment to file a similar schedule, explaining to them the nature of the penalty attached to wilful concealment.—*Ibid, par. 4.*

255. In continuation of the Circular order of the 27th February last, the Court hereby direct that the schedule required by that Circular order shall include not only land the proprietary right of which may be vested in the public officer to whom it may relate, but any land or other real property, whatever may be the nature of the tenure by which he may hold it, the description of tenure being also recorded in the schedule.—*Civ. Ord. West. C. 29th May, Cal. C. 3d July 1835.*



Where the schedule is to be registered, copies to be sent to the collector.

286. (*Lower Provinces*.) The schedule will be registered in the office to which the individual giving it in may be subordinate (in the *Western Provinces* in the office of the Collector of the zillah in which the officer may be employed); and copies will be sent to the Collectors in whose districts the property specified may be situated.—*Ibid*.

Orders of the Court of Directors on this subject

287. The Court of Sudder dewanny adawlat, for the Lower Provinces, are pleased to publish, for the information and guidance of the zillah and city Judges and their judicial subordinates, an extract (paragraph 53\*) of a despatch from the Honourable the Court of Directors No. 2, of 1812, dated 23d February and to communicate the following instructions on the subject to which it relates.—*Cir. Ord. 5th Sept. 1815, par. 1.*

The rule to be applicable only when the property is so considerable as to give the proprietor a preponderating local influence, and to divert the attention of the native judges, and interfere with their impartiality

288. The rule prescribed in the despatch cited, has not been hitherto enforced in the judicial department, and it might perhaps be deemed a measure of unnecessary severity to give it generally retrospective effect, without enquiring as to the circumstances, character, and conduct of the parties, who might be affected thereby. With regard therefore to present incumbents in judicial office, who are already in possession of landed property, whether patrimonial, purchased or otherwise acquired, it is not the desire or intention of the Court to exercise any interference, except where the extent of the property may be so considerable, as to give to the possessor a preponderating local influence, and induce him, for the protection of his own best interests, to engage in undertakings, and become a party to speculations and transactions which may divert his attention from his official duties, and at the same time, incapacitate him for their impartial and unbiassed fulfilment. In such cases, where the inconvenience and injury may be patent to common observation, it will be the duty of the Civil Judges to report the circumstances for the information of the Court, and for eventual submission for the orders of Government, in regard to those functionaries who are not subject to removal from office without the sanction of Government.—*Ibid, par. 2.*

Spirit of the rule of the Court of Directors to apply to present incumbents. Future acquisition of land or speculations interdicted

289. Further, as regards present incumbents, the Court are pleased, with the sanction of Government, to direct that the spirit of the rule prescribed by the Honourable the Court of Directors shall be observed, and that the future acquisition by those parties of landed property by purchase, or other means, such as farm, gift, or mortgage, and speculations of every description therein, within the limits of the *dist. at*, to which such parties, whether Principal Sudder Amcens, Sudder Amcens, or Moonsiffs, may belong shall be considered interdicted. It will be incumbent on the Civil Judges to bring to the immediate notice of the Court any contravention of this restrictive rule, which may come to their knowledge.—*Ibid, par. 3.*

The possession of land in the district a disqualification for the judicial office, except where the landed property is very small

290. In future, as a general rule, individuals possessing landed property, whether patrimonial, purchased, or other, on being engaged in speculations therein, will be considered ineligible for appointment to judicial office, within the limits of the district in which the said property may be situated; but the Civil Judges need not be thereby deterred from nominating such persons whenever the extent of land may be so small, as in their estimation to render the circumstance no objection to their employment in the district to which it appertains, a discretionary power to this extent having been reserved to the Sudder dewanny adawlat in such cases.—*Ibid, par. 4.*

\* "We direct the respectable observance of the rule of the service, that no officer holding civil authority in a district shall directly or indirectly be a holder of land or be concerned in any description of speculation therein."

291 It will not be difficult to check any contravention of the rules hereinbefore prescrib-

Reference to other  
C. O. on this subject.

C. O. 135, S. D. A. dated 27th Feb. 1835; C. O. 144, S. D. A. dated W. P. 10th April and L. P. 4th Sept. 1836  
C. O. 114, S. D. A. dated W. P. 29th May and L. P. 3d July, 1835

ed, by enforcing obedience to the instructions contained in the Circular orders enumerated in the margin.—*Ibid*, par. 5.

## SECTION XXVI.

### *Uncovenanted Judges—Applications for Promotion.*

292 The rules published in the Calcutta Gazette of the 30th July, 1836, provide for the promotion of every class of Native Judges according to their merits and qualifications. The Court have, notwithstanding, received numerous direct applications for promotion to vacancies, accompanied with original testimonials which required to be returned to the applicants. They have deemed it proper, therefore, to issue the following instructions, which you are requested to communicate to the subordinate judicial officers of your district.—*Cir. Ord. 6th March 1840, par. 1.*

Instructions re  
regarding application  
for promotion

293. Under the rules laid down by the Government, a record is kept in this office of the past services, merits and qualifications of the Native judicial officers of every class; and the authorities in charge of districts have been strictly enjoined to bring to the notice of the Court, in their annual civil reports, the names of those officers who have most exerted themselves within the year, and whose decisions and general conduct have proved most satisfactory. On the occurrence of a vacancy in any class of Native Judges, the claims of every officer are taken into consideration and arrangements made accordingly.—*Ibid*, par. 2.

A record is kept of  
the services and merit  
of every judge, and  
the judges are directed  
to bring the most  
meritorious to the no-  
tice of the S. D. A.

294 Although the observance of these rules renders it unnecessary for the Native judicial officers to bring forward their claims individually, still it should be understood that every officer is entitled to make such representations as he may think conducive to his interests to the superior authorities, and it will be incumbent on you to forward any representations of this nature which those parties may desire to submit through the channel of your office, for the information and consideration of the Sudder court.—*Ibid*, par. 3.

Every officer enti-  
tled to make repre-  
sentations conducive  
to his interest, and  
is required to for-  
ward them

295. The Court are further pleased to resolve that a similar indulgence should be extended to Moonsiffs and such other functionaries as may have lost their situations on the abolition of the old system, or on the reduction of temporary offices in which they may have been employed, and who may be desirous of stating their hopes or expectations to the Court.—*Ibid*, par. 4.

Some indulgence  
given to moonsiffs who  
have lost their situa-  
tions by a change of  
system

296. Any application however which may hereafter be forwarded by any Native Judges, direct to the Court, will not be answered; and no documents which may be received with such applications will be returned; except upon the application of the party, presented in the prescribed form and manner.—*Ibid*, par. 5.

Uncov. judges for-  
bidden to make ap-  
plication to S. D. A.

297. Under instructions from the Right Honourable the Governor of Bengal, I am directed to request, that you will abstain from forwarding to Government, representations from the uncovenanted Judges, or officers attached to your court, relating to their services, it being the wish of His Lordship, that all persons desirous of bringing their claims prominently to the notice of Government, should do so themselves by the public post.—*Cir. Ord. 30th Oct. 1840, par. 1.*

Judges forbidden to  
forward such applica-  
tions. The applicants  
will themselves for-  
ward them to govern-  
ment by post.

This order does not however rescind two previous orders

298. You will not, of course, consider this order as rescinding the Circular orders No. 215, of the 29th September, 1837, [*Rule 345 of this Chapter*] and No. 909, of the 6th March, 1840. [*Rules 292—296.*]—*Cir. Ord. 30th Oct. 1840.*

## SECTION XXVII.

### *Uncompensated Judges—Leave of Absence and Deduction of Allowances.*

Application for leave of absence from any Judge to be addressed to the Judge, who will forward it with his opinion. Leave may be granted by the Judge on an emergency

299. Applications for leave of absence on private affairs will be addressed by Principal Sudder Amceens, Sudder Amceens, and Moonsiffs, to the Judge of the District, who, if he think proper, may refuse the application. If, on the other hand, he is of opinion that it should be granted, he will forward it to the Court of Sudder dewanny adawlut, enclosed in a letter from himself, stating the cause of the application, and the grounds of his recommendation, and accompanied by a statement shewing the amount of business pending in the court of the applicant. In cases of emergency, the Judge may himself grant the leave immediately, reporting the circumstance to the Sudder dewanny adawlut.—*Gort. Ord. 29th Jan. 1833.*

Moonsiffs requiring temporary leave, except to avail themselves of the authorized

300. The Court have had frequent applications from Moonsiffs for leave of absence on private affairs, compliance with which is attended with great interruption to public business, as it is seldom possible to make arrangements for carrying on the duties of officers absent for short periods. They deem it necessary therefore to declare their expectation that Moonsiffs, who may require temporary leave of absence from their stations for any private purpose, will avail themselves of the periods of the authorized vacations, including the minor holidays, when the adjournments of the Civil courts admit of their doing so without public inconvenience. Applications of the kind at other periods, the Court will feel themselves compelled to reject, except in cases of indispensable necessity.—*Cir. Ord. 19th Feb. 1847.*

Application from P S A and S A to be sent by them to the Judicial Secretary

301 Pursuant to instructions from the Government, the Court request that all communications, heretofore made to them, on the following subject, be in future addressed direct to the Judicial Secretary:—Application for leave of absence, whether on the part of the Judges themselves or on the part of the Principal Sudder Amceens, and Sudder Amceens.—*Cir. Ord. 27th April, 1843, par. 1*

This rule is cited

302 Several references having been made to this office by the local authorities, regarding leave of absence to Principal Sudder Amceens and Sudder Amceens, for the periods of the Dussrah and Mohurram vacations, in contravention of the 1st rule of the Circular order No. 9, of the 27th April last, I am directed by the Court to call your attention to the provisions of the order cited, and to request that all such reports be, in future, made direct to the Government.—*Cir. Ord. 1st March 1844.*

Application from Moonsiffs to be accompanied by a statement of the period elapsed since the last leave

303. The Court direct that the Civil Judges in submitting applications from the Moonsiffs for leave of absence, do invariably state the interval that may have elapsed since the applicant was last absent from his post, with a view to enable the Court to judge of his claim to the solicited indulgence.—*Cir. Ord. 22d April 1844.*

S D A will pass orders on the application of Moonsiffs

304. The Sudder dewanny adawlut will pass orders on the application of Moonsiffs for leave of absence.—*Gort. Ord. 29th Jan. 1833.*

Rules regarding the

305. Several instances of Moonsiffs having left their stations without leave, having been

brought to the notice of the Court of Sudder dewanny adawlut, and applications for leave being frequently submitted so late as to preclude the possibility of the Court's orders thereon being received before the day on which the solicited leave is to commence, the Court are pleased to direct, that except in cases of sudden and severe illness, Moonsiffs shall not be permitted to quit their stations without leave. Should sudden and severe illness render a Moonsiff's remaining at his post dangerous, he may be permitted to leave it, reporting the same to the Judge; but, in such cases he must furnish, at the earliest opportunity, a medical certificate, which shall certify whether or no the emergency was such as to make the departure of the Moonsiff, without waiting for permission, necessary to the restoration of his health. The Judge will submit all such certificates for the orders of the Sudder dewanny adawlut, and state the period for which he would recommend leave of absence being granted to the sick incumbent, and also, what arrangement he proposes for the discharge of the duties of the Moonsiff's office pending his absence. The Court of Sudder dewanny adawlut further direct, that, except in cases of sudden emergency rendering an earlier application impracticable, Judges will refuse to transmit to the Court applications for leave of absence which may not be received by them in full time to admit of the Court's orders thereon being received, and communicated to the Moonsiff on or before the date on which it is proposed the leave shall commence. In the event of the sudden emergency alluded to arising, Judges may use their discretion in granting the leave applied for, if reporting the same to the Sudder dewanny adawlut. Moonsiffs, who shall leave their stations without permission, except as herein permitted, will render themselves liable to immediate dismissal. This circular is not to be understood as interfering with the rules in force regarding the leave of absence to Moonsiffs, and others, during the Mohurram and Dusserrah vacations.—*Civ. Ord. 25th April 1845.*

application for leave of absence from M.

306. A Principal Sudder Ameen, Sudder Ameen, or Moonsiff, absent from his station on leave shall suffer during the period of his absence a deduction of one-half of his allowance.—*Gort. Ord. 29th Jan. 1833.*

P S A, S A, or M when absent from their stations will lose half their allowances.

307. If the absence of the Principal Sudder Ameen, Sudder Ameen, or Moonsiff, exceed one month, and the state of the file of the absentee require provision to be made for the discharge of his duty during his absence, the individual appointed to act for the absentee shall receive during the period he remains in office, half of the fixed salary of the situation, together with the whole of the allowance for establishment, stationery, &c. The remaining half of the fixed salary, is all which during such period the fixed incumbent will be entitled to.—*Ibid.*

If their absence exceed a month then locum tenens will receive half the salary, and the whole of the allowance for stationery, &c.

308. Any person deputed to take charge of the current duties of a Moonsiff's office shall be entitled to receive a-fourth of the Moonsiff's salary or 25 Rupees per mensem.—*Civ. Ord. 6th March 1840.*

Any one in charge of the current duties of M will receive a quarter of his salary.

309. The increased allowance to Principal Sudder Ameens and Moonsiffs authorized by the order of Government of the 2nd October, 1837, on the ground of merit and services, is to be considered entirely personal, no part of which is to be allowed to persons officiating for absentees in the receipt of such increased allowances. Whenever a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, may be absent from his station on leave, the amlah on the establishment of such officer shall not suffer any deduction from their fixed allowances.—*Gort. Ord. 12th March 1839.*

The locum tenens will not receive any portion of the increased allowances of P S A and M. Their salaries will not be touched.

## SECTION XXVIII.

*Uncovenanted Judges—Consolidated Rules regarding Leave of Absence, and Acting Allowances of the Uncovenanted Service.*

Consolidated rules regarding leave of absence and acting allowances of the uncovenanted service.

310. The following Rules for regulating leave of absence and acting allowances to public officers in India, not in the covenanted service of the East India Company, have been passed by the Honourable the President in Council with the concurrence of the Right Honourable the Governor General, and are published for general information—*Govt. Not. 24th July 1846.*

Heads of office may grant leave to subordinates during the ordinary vacations without reporting it

311. Heads of offices and departments may grant to their subordinates leave of absence, without deduction from salary, during the vacations authorized by Government in each department, and it shall not be necessary to report the same to any higher authority. —*Ibid, Rule 1.*

Local government will grant leave on private affairs for six months on a deduction of one-half the salary

312. In addition to the above, the local Government will, at the recommendation of the head of a department and on sufficient cause being shown, grant special leave of absence on private affairs, for not more than six months, to any place within the limits of the East India Company's charter, one-half of the absentee's salary being deducted for such period of absence—*Ibid, Rule 2.*

And leave on medical certificate for one year on full pay

313. The local Government will also grant leave of absence, on medical certificate, for any period not exceeding one year, to any place within the limits of the East India Company's charter, one-half of the absentee's salary being deducted for such period of absence.—*Ibid, Rule 3.*

In case of emergency the heads of office may grant leave on medical certificate for a month, on half pay.

314. In cases of extreme urgency the heads of offices are authorized to grant leave of absence, on medical certificate, to the extent of a month, subject to the deduction specified in the preceding Rule, reporting the same to Government for sanction—*Ibid, Rule 4.*

If the leave under Rule 3, do not extend to a year, it may be extended subsequently on medical certificate

315. If the period of leave granted under Rule 3, be less than one year, the Government will extend the same, whether continuously or otherwise, to the full period allowed by the Rule, on the production of a medical certificate shewing the necessity for such an extension—*Ibid, Rule 5.*

After a year's leave, no further leave till after three years

316. But after the enjoyment of a full year's leave on medical certificate, whether continuously or by instalments, no further leave will be granted under Rule 3, until after the lapse of three years from the expiry of previous leave under that Rule.—*Ibid, Rule 6.*

Absence without leave risks the appointment and entails entire forfeiture of salary

317. Absence without leave will render the absentee liable to loss of appointment, and will be attended with entire forfeiture of salary for the whole period of such absence.—*Ibid, Rule 7.*

Salary to commence from date of joining appointments

318. No person appointed to a situation under the Government shall draw the salary of his appointment for any period prior to the date of his joining it.—*Ibid, Rule 8.*

Allowance of an officer when acting in a higher appointment than his own

319. An officer holding a situation appointed to one of equal or higher value, will, until he joins, draw so much of the salary of his new office as may be equal to the salary of his former situation, provided he does not exceed the time allowed for joining under the following Rule; should he do so, no salary will be passed to him for such period in excess.—*Ibid, Rule 9.*

Period allowed for joining an appointment

320. The time ordinarily allowed for joining an appointment is to be calculated at the rate of 15 miles a day (Sundays excepted,) together with a week to prepare for the journey,

but on occasions of emergency it will be optional with the Government to prescribe the period within which any journey is to be performed.—*Ibid*, Rule 10.

321. A person officiating temporarily in any situation on the occurrence of a vacancy, or during the absence of the real incumbent, will if he hold no other appointment, draw one-half the salary of such situation, and if he hold any other situation of less value, he will receive half the fixed salary of his own appointment, together with half the fixed salary of that in which he officiates, but no additional expense is to be incurred by the absence of any officer on leave.—*Ibid*, Rule 11.

Allowance of officiating officers holding no other appointment, or a higher appointment

322. These Rules are to be held applicable to all officers in the uncovenanted service of the Government, who may be in the receipt of salaries of 100 Rs. a month or upwards. To all others their spirit is to be applied so far as circumstances will permit. To officers receiving their appointments direct from the Government, leave of absence will be granted by the Government only, and in respect to other officers whose appointment and removal rest with their immediate superiors or with the heads of departments, it will be optional with the local Governments, to delegate to such heads of offices and departments power to act upon the Rules without special reference to higher authority.—*Ibid*, Rule 12.

These rules applicable to officers receiving 100 Rs. a month and upwards; and then spirit to all. By whom leave of absence is to be given.

323. It is to be clearly understood, that no leave of absence on private affairs shall be claimable by any party whatever under these rules as a matter of right, but that such leave shall be granted only at the pleasure of the Government or its authorized officers, when the concession of the indulgence in no way interferes with the interests of the public service.—*Ibid*, Rule 13.

No leave of absence under these rules claimable as matter of right.

## SECTION XXIX.

### *Vacations—the Mohurram and Dussarah Festivals and Native Holidays.*

324. The Court of Sudder dewanny adawlut, having reason to believe that adjournments of court occasionally take place on account of holidays, Hindoo and Mahomedan, the observance of which is not strictly enjoined or incumbent upon the Native officers and vakeels, I am directed to transmit for your information the accompanying list of established holidays, prepared some years since, on consultation with the Law Officers of the Sudder dewanny adawlut, to which the adjournments of that court are in consequence restricted.—*Cir. Ord. 6th April 1816. [A list of established holidays is published annually in the Bengallee Government Gazette.]*

Established holidays

325. The Court are aware, that the same Hindoo festivals are not equally observed in all parts of the country; but they desire, that in regulating the adjournments of your court, you will be guided, as far as local usages admit, by the lists now transmitted to you; and that you will be careful to reduce the aggregate number as much as practicable.—*Ibid*.

These lists to be generally kept in view, with local modifications

326. It appearing that the Circular order of the Sudder dewanny adawlut, under date the 6th April last, accompanying a list of Hindoo and Mussulman holidays, has been understood in some instances to prohibit the adjournment of the Civil courts for the prescribed periods of the Dussarah and Mohurram vacation; I am directed by the Court to acquaint you, that it was not intended by their order of the above date, to make any alteration in the established adjournments of the Civil court authorized by Section 2, Regulation 3, 1798, viz. for thirty days at the Dussarah, and fifteen at the Mohurram vacations.—*Cir. Ord. 4th Sept. 1816, par. 1.*

Adjournment of the courts for 30 days at the Dussarah and 15 days at the Mohurram.

No more holidays  
than those establish-  
ed to be allowed

327. The holidays to be observed in the mofussil courts were long since definitely fixed by a circular letter issued by the Court ; as it appears, however, that those orders have been neglected or forgotten, the attention of the Magistrates, and other judicial officers will be called to the subject, and they will be required to be careful that no more holidays be allowed than those specified in the Court's circular letter, dated the 6th of April, 1816, which are indispensable under the obligation of religious observances.—*Cir. Ord. 26th Feb. 1830, par. 22.*

The punctual atten-  
dance of the officers  
and vakeels of the se-  
veral courts, is requir-  
ed immediately on the  
expiration of the pe-  
riods prescribed for  
the mohurrum and  
dusserah vacations by  
Reg. 3, 1798

328. Frequent instances having occurred of the Zillah and City civil courts being adjourned beyond the fixed period of the Dusserah and Mohurrum vacations, in consequence of the vakeels and officers of the different courts having prolonged their absence beyond the prescribed periods of a month and fifteen days ; and the Court being of opinion, that no sufficient reason exists for such impediment to the regular opening of the Civil courts, as their own Native officers and vakeels, though some of them live at a considerable distance, return punctually at the close of the vacation ; I am directed to desire, that you will enjoin the several Judges and Magistrates in your division to require, in future, the regular attendance of their respective officers and vakeels immediately on the expiration of the fixed term of each vacation ; allowing 30 days for the Dusserah, and 15 days for the Mohurrum, as prescribed in Section 2, Regulation 3, 1798. You will also be careful to enforce an observance of the rule on the part of the Native officers and vakeels of your own court. —*Cir. Ord. 30th Nov. 1815.*

Rule for the ap-  
pointment of  
Magistrate  
Nov. 1815, to  
the

329. The Court's previous Circular order of the 30th November, 1815, which has reference to the return of the Native officers and vakeels at the end of the prescribed periods above-mentioned, is however to be considered in force ; and the Court rely on a strict observance of it. —*Cir. Ord. 4th Sept 1816, par. 2.*

The dusserah  
and mohurrum festi-  
val

330. The Provincial, Zillah and City civil courts, shall be annually adjourned during the Hindoo festival, called Dusserah, which occurs in the Bengal month Assin or Kartick, corresponding with the English month September or October, and also during the Mahomedan festival Mohurrum, which, depending on the lunar year, is not fixed to any particular month. The former adjournment (or Dusserah vacation,) shall commence ten days before this festival, and continue for the period of one month, of thirty days. The latter adjournment, (or Mohurrum vacation,) shall commence five days before this festival, and continue for fifteen days. Under this rule when the time of the two festivals may coincide, the vacations also will of course be blended, and no separate adjournment will be necessary ; except as far as the fixed period for the one may extend beyond that of the other, as when part of the Mohurrum vacation only may fall within the period fixed for the Dusserah vacation ; or, on the other hand when part of the latter only may fall within the period of the former.—*Reg. 3, 1798, Sect. 2.*

S. D. A. may modi-  
fy the above rule

331. The Court of Sudder dewanny adawlut are empowered to authorize and direct an occasional dispensation with the rule for periodical vacations of the Provincial, Zillah, and City courts, contained in Section 2, Regulation 3, 1798, and Section 13, Regulation 8, 1805, in the instance of any particular court, wherein, from the arrears of business, or other cause, it may appear expedient that the vacations thereby provided for, or either of them, should not take place.—*Reg. 1, 1806. Sect. 10.*

Period when the

332. The terms of Section 2, Regulation 3, 1798, which directs that the Mohurrum vaca-

tion shall commence five days before this festival, having been construed to mean five days before the first of Mohurram; I am directed by the Court of Sudder dewanny adawlut, with the sanction of the Governor General in Council, to acquaint you, for your information and guidance, that the adjournment of the courts for that vacation is to commence on the 1st day of the month of Mohurram, and to continue for fifteen days as prescribed by the above Regulation.—*Cir. Ord. 31st May 1803.*

mohurram vacation is to commence.

333. The Court do not understand the rules in question, issued under an order of the Governor General in Council, as affecting those parts of the Regulations (3, 1798, &c.) which authorize the adjournment of the Civil courts during the Mohurram and Dusserah vacations, for the purpose of giving to the Mahomedan and Hindoo officers of the court the opportunity of visiting their families, as well as of observing their religious ceremonies during these periods of adjournment. The Sudder Ameens and other officers are still, as heretofore, at liberty to visit their homes with the permission of the Judge.—*Cir. Ord. Cal. and West. C. 10th May 1833.*

The judicial officers may visit their homes during these festivals with the judge's permission.

334. The Civil courts being closed during the period of Mohurram and Dusserah vacations, with the express object of allowing the amlah and vakeels to visit their homes, you are authorized to comply with any applications for leave of absence during those periods, which may be made to you by the uncovenanted Judges under your control, merely reporting to the Court the names of the officers to whom you grant leave. In those instances, however, in which applications may be made for leave of absence for any time in excess of the vacations, you will, as at present, make previous reference to the Court for their orders, or for the orders of Government, in regard to Principal Sudder Ameens and Sudder Ameens under the circular of the 4th September last.—*Cir. Ord. 26th March 1841, par. 2.*

Judges will grant leave to the uncov. judges during these vacations. Application for leave in excess of them must be referred to the S. D. A., or to government.

335. Government have resolved that the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs shall in future be subjected to no deductions from their salary, if absent, on authority duly obtained, only for the period of the usual Dusserah and Mohurram vacations; but that when their absence extends for any period beyond those vacations, they shall then be subject to the deduction prescribed by the orders of the 29th January, 1833, published in the Gazette of the 2d February of that year, for the whole period of their absence, inclusive of the vacations.—*Cir. Ord. Cal. and West. C. 26th Sept. 1834.*

No deduction of allowance during these two vacations, but only for the period in excess.

336. Any absentee under such circumstances, [that is, who may have obtained leave for the prescribed time during the Dusserah and Mohurram festivals,] who, either before or after his return, can satisfy the zillah Judge by medical certificate, or otherwise, that he is or was unable on account of sickness, to return within the proper time, will in future be exempt from deduction of salary; but if unable to account for his absence, beyond the fixed period, to the satisfaction of the Judge, he will be subjected to the penalty of deduction of his whole salary, for the period in excess of the vacation, the amount of salary for the term of vacation remaining untouched.—*Cir. Ord. 27th Oct. 1840.\**

Rule when the uncov. judge was unavoidably absent in excess of the vacation.

\* The following précis of the rules is subjoined to exemplify the different cases in which absentees retain their whole salary and those in which deductions are made.

Absent on leave during the Mohurram and Dusserah vacations. No deduction of salary.

Absent on leave at any other period. Half the salary to be deducted.

Absent on leave for the vacations and any period in excess. Half the salary to be deducted for the period in excess.

Overstaying leave for the vacations, but producing medical certificate or other proof of sickness, &c.—As above.

Overstaying leave for the vacations, but unable to produce medical certificate, &c.—Forfeiture of salary for the period in excess.

Absent without leave—Loss of salary for the period



Salary of M. not to be deducted when absent with leave on the established vacations.

337. Moonsiffs are not liable to any deduction from their salaries, when absent from their station, with the permission of the Judge, on any of the established Native holidays.—*Con. 953, Cal. C. 22d May, West. C. 8th May 1835, Vol. 2, p. 213.*

### SECTION XXX.

#### *Uncovenanted Judges—Correspondence.*

All official communications to be made to moonsiffs by roobukaree and not by perwannah and urzee

338. The Court, having had under consideration the mode of address at present in use as regards official communications with the Moonsiffs, are pleased, with the sanction of his Honour the Deputy Governor of Bengal to extend to those officers the rule laid down in paragraph 2 of the Circular order of the 30th November, 1832, and to direct that, in future, all official communications with them shall be made by roobukaree, instead of by perwannah and urzee, as has hitherto been the practice.—*Cir. Ord. West. C. 24th Aug., Cal. C. 19th Oct. 1838*

Moonsiffs will communicate direct with each other by roobukaree

339. It having been ruled by the Courts of Sudder dewanny adawlut that Moon-siff within the same jurisdiction, who may have occasion to address each other, upon business before their respective courts, may do so by roobukaree direct, instead of communicating through the medium of the Judge, I am directed to request that you will issue instructions to the Moonsiffs under your control, to the foregoing effect, for their future observance.—*Cir. Ord. 10th April 1840.*

Communications to covenanted officers by S. A. and M.

340. Sudder Ameens and Moonsiffs will forward all communications to covenanted officers as heretofore, through the European Judges, except communications to such officers as are parties to suits before them, in which case, they will be addressed direct to the officer whom they may concern.—*Cir. Ord. Cal. C. 1st Dec. 1837, West. C. 9th Feb. 1838.*

Requisitions of M. to the judicial and revenue authorities how to be made

341. The Courts of Sudder dewanny adawlut having had under consideration the practice which now obtains, in regard to the transmission of the requisitions of Moon-siffs to the several judicial and revenue authorities, and from the representations laid before them on that subject, being of opinion, that the practice of constituting the zillah Judge, to whom the Moonsiff may be subordinate, the channel for making such requisitions, answers no useful purpose, while it tends to impede the despatch of business in both courts, are pleased to prescribe the following rules to be observed in future, in such cases. Paragraph 5, of the Circular order, dated 16th November, 1839, is hereby rescinded, and the rules contained in the remaining paragraphs of that circular are extended to courts of Moonsiffs, with the exception, that when a Moonsiff may have occasion to employ the Government Post as the channel for conveying any requisition or application to the authorities, or persons referred to in the Circular order above cited, or to Mahomedan or Hindoo Law Officers, as mentioned in Circular order, No. 2359, dated 5th July, 1842, he shall enclose his requisition, or application, in an open envelope, and transmit the same to the zillah Judge, who with due observance of the Post Office rules, will seal, frank, and forward the same for despatch to its destination.—*Cir. Ord. 15th April 1843.*

342. Principal Sudder Ameens and Sudder Ameens will correspond direct by roobukaree with all covenanted officers of Government, except the Secretaries to Government, the Sudder dewanny adawlut, (with the exception of references in suits above Rupees 3,000 referred to Principal Sudder Ameens for trial under the provisions of Act XXV. of 1837,) the Sudder

Board of Revenue, Residents at foreign Courts, Agents to the Governor General, and all military officers.—*Cir. Ord. Cal. and West. C. 16th Nov. 1839, par. 2.*

343. As regards communications with the three first named authorities excepted by the preceding paragraph, and with military officers, the present practice is to be continued.—*Ibid, par. 3.* Idem.

344. Whenever a Principal or other Sudder Ameen may have occasion officially to address a Resident at a foreign Court or a Governor General's Agent regarding any matter connected with a suit before his court, he shall transmit a simple Oordoo kyfceut or statement of the particular matter on which he may desire a reference to be made, without the addition of any application or requisition on his own part to the Judge to whom he may be subordinate, who on the receipt of such statement, will forward it to the Resident or Agent concerned, accompanied by an English letter containing such request or application as the nature of the reference may appear to call for, to be dealt with as the authority addressed may deem discreet and fitting.—*Ibid, par. 4.* Correspondence of P. S. A. or S. A. with a Resident at a foreign court, or the agent of the G. G.

345. Considerable inconvenience having been experienced in consequence of the Native Judges addressing the [Sudder] court direct, by the public dawk, on various subjects connected with their official situations, I am desirous to request that you will instruct them, invariably to submit through you—any communications they may desire to lay before this Court. It is to be understood that this rule is intended to afford you an opportunity of recording, whenever you may deem it necessary, your own sentiments on the references which may be made by the Native Judges. You will also explain to the Native Judges that this rule is not to be considered as applicable to appeals preferred by them against any orders passed by the zillah Judges. Such appeals will continue to be preferred in the usual manner on stamp paper and through a regular vakeel or agent.—*Cir. Ord. 29th Sept. 1837.* Correspondence of Native Judges with the S. D. A. on matters connected with their official situations.

346. Official communications in the Native languages between European covenanted officers and Sudder Ameen and Principal Sudder Ameen should be made by roobukarees, as has been hitherto the practice in the case of Registers and Assistants, instead of by *peruanah* and *urree*, the mode heretofore in force, with respect to Sudder Ameen, and to request that you will adopt this mode in future.—*Cir. Ord. Cal. C. 19th Oct. West. C. 30th Nov. 1832.* Communications between European officers and P. S. A. and S. A. to be made by roobukaree.

347. The Native Judges of every grade will correspond direct with Natives of rank.—*Cir. Ord. Cal. and West. C. 16th Nov. 1839, par. 6.* Correspondence of the N. Judges with natives of rank.

348. In communicating the instructions to the Native Judges, you will of course impress upon them the propriety of observing a proper respect towards all Natives of rank with whom it may be necessary to correspond on official matters, and addressing them in the form and style employed on like occasions by the European Judge of the district. In like manner, Natives of rank will be required to pay proper respect to the Native Judges, adopting as a general rule the forms of address laid down in the Court's Circular, No. 9, of the 6th July, 1838.—*Ibid, par. 7.* Idem

349. An instance having been brought to the notice of the Government, of an improper mode of address towards a Native gentleman of rank by a public functionary, I am directed to request that you will be careful that Native gentlemen, and particularly those of high rank are addressed in all public documents in a courteous style suitable to their station in society.—*Cir. Ord. 19th Nov. 1841.* Idem

## SECTION XXXI.

*Uncovenanted Judges—Miscellaneous Rules.*

The allowance for the establishment of uncov judges to be strictly appropriated to that purpose

350. With reference to the resolution passed by the Right Honourable the Governor General of India in Council, under date the 2d October last, fixing the allowance to be drawn by the Principal Sudder Ameer, Sudder Ameer, and Moonsiffs, on account of establishment and stationery, I am directed by the Court to acquaint you that it is the intention of the Government that the whole sum should be bonâ fide appropriated to those purposes. You will inform the subordinate judicial functionaries of your district accordingly, and direct them to submit to you, without delay, a statement of the manner in which they propose to expend the allowance in question, in revising which, you will see that the sum set down for stationery is not larger than upon a fair estimate, may appear to you necessary to cover the expense likely to be incurred in providing that article.—*Cir. Ord. Cal. and West. C. 2d March 1838.*

Form of address to the native judges

351. The Government having been pleased to approve of an alteration of the forms of address to be used in communications addressed to the Principal Sudder Ameer, I am directed by the Court to request that the following forms be observed in future by all public functionaries having occasion to correspond with the Native Judges.

## PRINCIPAL SUDDER AMEER.

	<i>Form of Address.</i>	<i>Title</i>
Christian,	Sir.	Esquire
Mahomedan,	عالی مرتبہ سلمہ اللہ تعالیٰ	خان بھادر
Hindoo,	ایضاً	راہی بھادر

## SUDDER AMEER.

Christian,	Sir.	Esquire.
Mahomedan,	دعوالی منزلت سلمہ	خان
Hindoo,	ایضاً	راہی

## MOONSIFFS.

Christian,	Sir.	Mr.
Mahomedan,	بعافیت باشند	واینت و اماہ بنہا
Hindoo,	ایضاً	ایضاً

*Cir. Ord. Cal. C. 6th July, West. C. 7th Sept. 1839.*

Z judges when delivering over charge of their office will record their opinion of the N judges subordinate to them

352. Considerable inconvenience having been experienced in preparing the annual reports, from the want of detailed information regarding the general character and qualifications of the Native Judges, arising, in some instances, from the district Judges being absent from the station, and in others from their absence from the country at the period of the transmission of the annual statements, the zillah and city Judges are required, in order to guard against this want of

information, on delivering over charge of their offices, to record a minute, containing their opinion of their subordinate judicial officers, (Principal and other Sudder Ameen's, and Moonsiffs,) for the use of their successors, and eventually for the information of the Court and of Government.—*Cir. Ord. Cal. C. 7th Dec., West. C. 21st Dec. 1838, par. 9.*

353. The Honourable the Governor of Bengal entirely approves their suggestion, that in future the situation of Native Judge, of whatever grade, shall not be held conjointly with that of the Mahomedan Law Officer of the Zillah courts.—*Cir. Ord. Cal. and West. C. 5th Feb. 1836.*

Mahomedan law officer not to be appointed a N. Judge.

354. The Circular order of the Sudder dewanny adawlut, No. 166, dated 5th February 1836, is, under the authority of Government, so far modified as to leave the Court at liberty to exercise their discretion in appointing persons holding the office of Mahomedan Law Officer, to be at the same time Moonsiffs at the sudder stations of the Zillah courts, whenever there may be reason to believe that the junction of the two offices will not retard the administration of civil justice, or be otherwise prejudicial to the public service. The court will be guided by the same considerations in recommending to Government the appointment of Mahomedan Law Officers of the Zillah courts, to the office of Sudder Ameen.—*Cir. Ord. 23d Aug. 1841, par. 2.*

This rule modified. The M. law officers may be appointed M. at the sudder station, when it can be done without prejudice to the public service.

355. The Circular order in question, and former circulars, require that the Judges and other judicial authorities shall furnish, whenever they do not decide on their merits in any month

P. S. A. having on file only original suits,	20 suits
Ditto original suits and appeals,	25 suits
Sudder Ameen's,	20 suits
Moonsiffs	25 suits

a certain number of suits as per margin, explanations of the causes which have prevented their deciding that number. It appears to have

Number of suits which the U judges are expected to decide in the month; an explanation to be given when they fall short of this number, and the Z judge to give his opinion in this matter.

been by some understood, that this is the *maximum* number which each officer is expected to decide. This idea is erroneous; the number fixed is the *minimum*; and it is the duty of each officer to decide as many beyond it as possible, consistent with a full investigation into their merits, explanation being required from each officer on the occurrence of any deficiency in the amount thus fixed as the *minimum*. It is the duty of the superintending authorities to see that these explanations are inserted in the monthly civil statements, and to add distinctly their opinion, in each individual case after due enquiry, as to the sufficiency or otherwise of the reasons assigned, as well as to warn and admonish the inferior authorities in cases of neglect or inattention, and to bring to the notice of the Court any instances in which their admonitions have not had the effect of inducing diligence and attention.—*Cir. Ord. Cal. and West. C. 25th Jan. 1833.*

356. Although, when there may be but a small number of regular suits pending on the file of the courts of the Native Judges, it may be a sufficient reason, as far as those cases are concerned, for not determining the prescribed quantity, that no more admitted of decision, that very circumstance proves that the officer making the excuse must have had a more than an ordinary degree of leisure, at his command to devote to the performance of the miscellaneous duties of his office; and the Court will therefore expect, in future, that whenever the cause abovementioned may operate to prevent the determination of the required number of regular suits, the deficiency in that respect will be fully counterbalanced by the larger number of decisions passed in miscellaneous cases; otherwise the excuse will not be admitted.—*Cir. Ord. Cal. and West. C. 6th Nov 1835.*

When a smaller number is decided, from there being no more ripe for judgment, a larger amount of miscellaneous business must be shewn.

357. It having been brought to the notice of the Court that some Principal Sudder Ameen's, Sudder Ameen's, and Moonsiffs have been in the habit of selecting undefended suits and other cases easy of decision, without reference to the number on the file or the date of institu-

These judges must not select undefended, or easy suits to make up the prescribed

ed number. Suits to be tried in their order.

tion, and deciding the same, in order to make up the number of suits prescribed by the Circular orders, and expected by the Court to be disposed of by those officers, I am directed to call your attention to the subject, and to request that you will ascertain whether this objectionable practice obtains in your district, and, if so, that you will strictly prohibit the same, and direct the uncovenanted Judges to bring on the causes depending in their respective courts, for trial, according to the order in which they may have been filed.—*Cir. Ord. 3rd July 1840.*

Uncovenanted judges will sign their names to documents in the character of their own language, and in full.

358. It having been brought to the notice of the Court that some of the Native Judges sign their proceedings in English, sometimes employing initials instead of signing their names in full, the Court are pleased to prohibit the practice in question, and to direct that all uncovenanted Judges will sign their names to official documents in the character of their own language, and in full, instead of merely employing initials.—*Cir. Ord. 24th June 1842.*

Modification of this rule. They may sign in English or any other character, but in full, and with uniformity.

359. In modification of the Circular of the 24th June last, the Court are pleased to direct that uncovenanted Judges may at their option sign their names in the English or in any other character, but that they shall always sign in full, instead of employing initials, and only use one character on all occasions, instead of having recourse to different characters at different times.—*Cir. Ord. 9th Sept. 1842.*

All officers of Government entitled to exemption from ferry tolls.

360. In pursuance of the orders of the Government (dated the 9th instant,) the following copy of a letter (No. 459, of the 28th ultimo,) from the Under-Secretary to the Government of India, in the Home department, exempting all Government officers from the payment of ferry tolls when proceeding on the public service is circulated for general information:—"I am directed to acknowledge the receipt of your letter, No. 981, dated the 28th ultimo, with its enclosure, and in reply to state, for the information of the Right Honourable the Governor of Bengal, that the Governor General in Council approves of the proposition submitted by Mr. Daupier, Superintendent of Police, Lower Provinces, and authorizes that all officers of Government be exempted from the payment of ferry tolls within the division to which they may belong when they are moving in those divisions on the public service; and any officer not entitled to exemption under this definition of the rule who may prefer a claim to exemption based on the principle which the rule is intended to establish, will refer his claim for special consideration and orders to the department to which he belongs."—*Cir. Ord. 25th July 1845.*

Duties to be performed by assistants and by native officers.

361. The Native officers attached to the courts are to assist the Registers in performing the abovementioned duties, and in translating and transcribing papers, and in arranging and keeping the records of the courts. The Registers and their Assistants, and the Native officers are to perform the duties specified in this section, in the manner and conformably to the rules, which the Judges of the courts to which they may be respectively attached, may think it proper to prescribe. The Native officers of each court, are not to interfere in any other manner than as above directed, publicly or privately in any cause or matter depending before the court, or which may have been, or shall be intended to be brought before it.—*Reg. 13. 1793, Sect. 8.*

S. A. and M. not included in the above prohibition

362. Sudder Amiens and Moonsiffs are not considered to be Native officers, who are prohibited by Section 8, Regulation 13, 1793, Regulation 12, 1795, and Section 11, Regulation 12, 1803, from interfering publicly or privately in suits or matters pending before the Judge's court.—*Gen. 520, 21st Aug. 1829, Vol. 1, p. 221.*

## SECTION XXXII.

*Persons amenable to the Courts.*

363. It is hereby enacted, that from the first day of June, 1836, the 107th clause of an Act of Parliament, passed in the 53rd year of King George the 3rd, and entitled "An Act for continuing in the East India Company for a further term the possession of the British territories in India, together with certain exclusive privileges:—for establishing further regulations for the government of the said territories, and the better administration of justice within the same, and for regulating the trade to and from the places within the limits of the said Company's charter," shall cease to have effect within the territories of the East India Company.—*Act XI. 1836, Sect. 1.*

Repeals sec. 107, of 53 George III.

364. And it is hereby enacted, that from the said day, and within the said territories, no person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever, excepted from the jurisdiction of any of the courts hereinafter mentioned:—That is to say—the Courts of Sudder dewanny adawlut—of the zillah and city Judges—of the Principal Sudder Ameens—and of the Sudder Ameens, in the territories subject to the Presidency of Fort William in Bengal.—*Ibid, Sect. 2.*

No person, by reason of place of birth or of descent, shall be exempt from jurisdiction of the courts enumerated.

365. Doubts having been entertained as to the legality of referring to Principal Sudder Ameens and Sudder Ameens suits in which European British subjects, European foreigners, or Americans are parties, which were instituted prior to the promulgation of Act XI. of 1836; I am directed to communicate to you the opinion of the Court, that as so much of the exception contained in Clause 2 Section 15, and Clause 1, Section 18, Regulation 5, 1831, as excluded such suits from the cognizance of the Principal and other Sudder Ameens, has been superseded by the provisions of Act XI. 1836, the reference of these cases, whether instituted prior or subsequent to the promulgation of the Act, should be regulated by the same rules as are applicable to other cases cognizable by those officers.—*Civ. Ord. Cal. and Hist. C. 26th Aug. 1836.*

The reference of suits, in which British subjects, foreigners, or Americans are parties, to the P. S. A. to be regulated as in the case of all other suits.

366. The Act in question, in providing that no person shall by reason of place of birth or by reason of descent be exempted from the jurisdiction of certain courts, does not take away any exemption to which any person may be entitled by virtue of his office, and consequently judicial functionaries who were not liable to civil actions in the courts specified in the Act for damages on account of alleged injuries committed in their official capacity before the passing of the Act, will not be liable now.—*Civ. 1051, 10th Oct. 1836.*

Judicial functionaries who were not liable to civil actions before act XI. of 1836 was passed, will not be liable now.

## SECTION XXXIII.

*Jurisdiction of the Civil Courts—Suits and Matters cognizable by them.*

367. The Zillah and City courts respectively, are empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land-rents, revenues, debts, accounts, contracts, partnerships, marriage, caste, claims to damages for injuries, and generally, of all suits and complaints of a civil nature in which the

Of what suits the zillah and city courts to have cognizance, when defendant comes under any of the descriptions of persons mentioned in sec. 7.

defendant may come within any of the descriptions of persons mentioned in Section 7, provided the landed or other real property to which the suit or complaint may relate shall be situated, or, in all other cases, the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall reside as a fixed inhabitant, within the limits of the zillah or city over which their jurisdiction may extend.—*Reg. 3, 1793, Sect. 8.—Benares, Reg. 7, 1795, Sect. 7.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 5.*

Rules for determining disputes regarding the rates of pottahs to be granted under reg. 8, 1793.

368. The approbation of the Collector required to be obtained to pottahs by Section 58, Regulation 8, 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind, it shall be determined in the Dewanny adawlut of the zillah in which the lands may be situated, according to the rates established in the purgunnah, for lands of the same description and quality as those respecting which the dispute may arise.—*Reg. 4, 1794, Sect. 6.—Benares, Reg. 51, 1795, Sect. 9.—Ced. and Cong. Prov. Reg. 30, 1803, Sect. 9.*

Rules in the preceding section applied to the renewal of pottahs that may expire or become cancelled under reg. 4, 1794.

369. The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation 8, 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation 4, 1794.—*Reg. 4, 1794, Sect. 7.—Benares, Reg. 51, 1795, Sect. 10.*

[The two rules above 368 and 369 refer, of course, only to regular suits regarding the rates of pottahs.]

The courts of justice to determine the rights of every description of landholder and tenant

370. In like manner, in all other instances, the Courts of justice will determine the rights of every description of landholder and tenant, when regularly brought before them; whether the same be ascertainable by written engagements; or defined by the laws and regulations; or depend upon general or local usage, which may be proved to have existed from time immemorial.—*Reg. 7, 1799, Sect. 15. Cl. 8.—Benares, Reg. 5, 1800, Sect. 14. Cl. 8.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 32, Cl. 8.*

All suits and complaints relative to marriage are to be heard in the civil courts

371. The Magistrate of Allahabad, on the complaint of A., ordered that B. should give up to him his daughter, whom A. alleged that he had married. The Benares Court of circuit, considering that the case was not cognizable in the Foujdary court, rescinded the Magistrate's order, leaving the complainant the option of suing to prove his marriage in the regular suit in the Civil court. On a reference by the Magistrate, the Court of Nizamut adawlut, on 31st March, 1814, concurring with the Court of circuit, stated it as their opinion that all suits or complaints relative to marriage were to be heard in the Civil courts.—*Con. 148, 31st March 1814.*

A suit for the recovery of damages in the civil court can be legally entertained against a party who has been already punished for abduction by a criminal sentence of a criminal court.

372. I am directed to request, that you will obtain the Sudder court's opinion, whether a suit for the recovery of damages in the Civil court can be legally entertained against a party who has been already punished for abduction by the award of a criminal tribunal.—*Reply of the Sudder Court.*—This Court are disposed, on a review of the case out of which the present reference arose, to consider that as the penal imposition of fine and award of imprisonment in the Criminal court were on account of the abduction of the complainant's wife, such criminal sentence does not bar the institution of a civil suit for any pecuniary losses alleged to have been sustained by the husband in consequence of the act so punished.—*Con. 1251, 1st Nov. 1839.*

373. A. enters into a contract with B., on the security of C. and D., for furnishing a boat to convey certain goods of A., to a fixed place on the banks of the river; thereafter B. unloads the goods, and refuses to carry them on according to his agreement; can then B., not being a workman, be punished by the Magistrate under the Regulation quoted?—In reply, I am directed to inform you that in the case put by the Magistrate, the provisions of Regulation 7, 1819, would not apply; the contract seems to have been of a purely civil nature, and security was taken for the performance of it; the person aggrieved should therefore seek his remedy in the Civil court.—*Con. 1085, West. C. 14th April, Cal. C. 12th May 1837.*

A contract between A. and B. on the security of C. and D. to furnish a boat to convey certain goods of A. to a certain place on the river, is not cognizable by the magistrate; the contract being of a civil nature, the remedy must be sought in the civil court.

374. The claims of Government to lands included in the decennial settlement are subjected to the cognizance of the Courts of judicature, and no individual can be legally dispossessed from such lands, unless a decree of court has been given against him. Costs given against Government in a case wherein this principle had not been observed, and the plaintiffs, who had been irregularly dispossessed, were at the same time allowed the full benefit of the rule of limitations for the cognizance of civil suits.—*S. D. A. Sel. Rep. 30th Aug. 1815, vol. 2, p. 156.*

Claim of govt. to lands permanently assessed cognizable in the civil courts.

375. In a suit instituted in the City court of Patna, against a resident of that place, for the amount of a debt incurred in a foreign territory the defendant pleads against the jurisdiction. But the Sudder dewanny adawlut overruled the defendant's plea, and determined that he was amenable, in a personal action, for debt, to the jurisdiction of the Civil court of Patna.—*S. D. A. Sel. Rep. 20th Aug. 1810, vol. 1, p. 306.*

A suit against the resident of a place for a debt contracted in a foreign country cognizable by the civil court of that place.

376. In a dispute as to whether certain lands formed part of a private estate, or of a mehal ordered for resumption by a decree of the Special Commissioner appointed under Regulation 3, 1828, a mere plea by the revenue authorities that the lands belonged to the resumed mehal, does not arrest *in limine* the jurisdiction of the Civil court.—*Remarks.*—The case was in fact a mere boundary dispute, and must have been admitted, though the decree of the Special Commissioner could not be infringed, but on the contrary would form the document on which the boundary would be decided.—*S. D. A. Sel. Rep. 14th Aug. 1840, vol. 6, p. 297.*

Interference of the civil courts with the proceedings and decisions of the resumption courts.

377. A decree of the Resumption courts in regard to the right of assessment of lands, does not bar the jurisdiction of the ordinary Courts of justice, in regard to the question of proprietary right.—*S. D. A. Sel. Rep. 17th Dec. 1846, vol. 7, p. 284.*

*Ibid.*

378. A Zillah court has jurisdiction in a suit between parties trading in Calcutta, but residing within the zillah, the cause of action having arisen in Calcutta.—*S. D. A. Sel. Rep. 14th Jan. 1841, vol. 7, p. 1.*

A suit between parties trading in Calcutta, but residing in the zillah, cognizable by the civil courts.

379. One of the defendants having taken the benefit of the Insolvent Act in Calcutta, is no bar to the Zillah court's cognizance of the action against the rest of the defendants.—*Ibid.*

Insolvent act in Calcutta

380. I have the honour to submit, for the consideration of the Court of Sudder nizamat adawlut, copy of a letter addressed to me by the Magistrate of Tirhoot on the 7th instant, with my reply thereto of to-day's date, and with reference to the point mooted by Mr. Wilkinson, to request the opinion of the Court on the following point. A bund is constructed by A. on his own land, which bund B. proves to be injurious to his interests; can the Magistrate order the destruction of the bund?—*Reply.*—I am directed by the Court to observe that they are of opinion that cases of the nature of the one which forms the subject of the present reference, would appear to come more properly within the jurisdiction of the Civil than of the Criminal courts, but that particular instances may arise in which the immediate interference of the Magistrate would be

Mode of proceeding in regard to a bund constructed by a person in his own land which is injurious to the property of another



necessary and proper to prevent either a breach of the peace or any serious injury to the property of the complainant, supposing of course the act complained against to have been of recent occurrence as would seem to have been the case in the instance under consideration.—*Con.* 1091, *West. C. 28th April, Cal. C. 26th May 1837.*

## SECTION XXIV

*Jurisdiction of the Civil Courts—Courts in which particular suits are to be instituted.*

A suit to recover a debt must be instituted in the court of the district in which the cause of action arose, or in which the defendant is or has been residing at the commencement of the suit. The residence of the defendant being an occasional situation, or having avoided being present in the district does not take the suit from the jurisdiction of the court.

381. Under the provisions of Section 5, Regulation 2, 1803, suits of the nature described in your letter, viz. suits on debts contracted in Calcutta, the obligations by which the debts are represented, such as bills, bonds, notes on hand, or receipts, being dated and executed in Calcutta, may only be brought in your court; that is, the Zillah court of Cawnpore; where either the cause of action has arisen or the defendant resided at the time of the execution of the instrument. The residence of the defendant at any other place, or his occasional situation, or his having avoided being present in the district, does not take the suit from the jurisdiction of the court. *Con.* 757, *West. C. 11th June Cal. C. 5th July 1833.*

A suit to recover a debt must be instituted in the court of the district in which the cause of action arose, or in which the defendant is or has been residing at the commencement of the suit. The residence of the defendant being an occasional situation, or having avoided being present in the district does not take the suit from the jurisdiction of the court.

382. On the 10th January 1811, the Sudder Dewanny Adawlut in reply to a reference made by the Judges of Raghshy, whether a suit for recovery of arrears of rent, collected by a subhakar, from a mukdmeer mahal situated in Nudda should be instituted and tried at Raghshy, the defendant's place of residence, or at Zillah Nudda, gave it as their opinion, that it should be brought forward and tried in the latter district on the ground that the land being situated in Nudda, any local enquiry that might appear necessary could be made with greater facility and propriety under the orders of the court presiding over the jurisdiction in which the lands were included. *Con.* 75, *10th Jan. 1811.*

In a suit for the balance of rent claimed in the Rungpore district, the plaintiff and defendant being both residents at Moorsshedabad, the court were of opinion that the suit should be tried at Rungpore.

The accompanying document is copy of a petition of plaint preferred in the Moorsshedabad Court of appeal for balance of rents claimed on a farm in the Rungpore district. Before the abolition of that court, it was sent over to the City court for trial, on the ground that the plaintiff and the defendant were both resident within the jurisdiction of the City court of Moorsshedabad. Circumstances connected with the management of the affairs of the plaintiff's heirs, after his death, delayed the hearing of the cause till yesterday, when it came under consideration in this court, and it appeared that the farm for which rent is claimed, is in the Rungpore Zillah. Though from its being of greater amount than 10,000 rupees it was only cognizable in the Provincial court of the division, yet, if a summary suit for the rent had been preferred under Regulation 7 of 1799, it must, I presume, have been preferred in the Rungpore Zillah court; if, after a decision, a regular suit had been preferred to reverse the summary award, the plaintiff, whether landlord or tenant, would, if the sum had been below 10,000 rupees, have filed his plaint in the Rungpore and not in the Moorsshedabad City court; and as the ground of action is the same whether the regular suit follows a summary award or is preferred without a previous summary suit, I infer that under Section 8, Regulation 3 of 1793, this suit should now be tried by the Zillah court of Rungpore under the provisions of Regulation 5 of 1831, and that before the abolition of the Court of appeal, the jurisdiction did not depend on the residence of the parties, but on the local situation of the farm.

Under this impression, as the suit is for a large sum (upwards of three lacs of rupees) and may involve much unnecessary expense to parties, if after my decision an objection was successfully made to the jurisdiction, I have thought it advisable to suspend further proceedings until I have the orders of the Sudder dewanny adawlut, as to its disposal, as I do not think myself competent to alter an order of the Court of appeal, even if I happen to be right in my opinion, that the suit is within the jurisdiction of Rungpore, and without that of the Moorshedabad City court.—*Reply*.—I am directed by the Court to acknowledge the receipt of your letter of the 5th instant, requesting their opinion as to the zillah in which the case of Koonwar Harimath Rai, plaintiff *versus* Tarno Shanker and others for the rent of a farm in zillah Rungpore, should be tried. In reply to refer you to the Construction, No. 73, dated 14th April, 1811, (in page 14 of the printed Construction book) and to request that you will transfer the case to the jurisdiction of the Rungpore for trial.—*Con* 871, *Cal* 21st Feb., *West. C.* 21st March 1811.

384. I have the honor to state to the plaintiff, that the case is on the following points: Deokun, Deon and Lawarai, plaintiffs, *versus* Dhukrao, defendant. The plaintiff's village is Dhukrao, of which the defendant is proprietor. The defendant is a resident of Myynpore. The plaintiff sued the defendant summarily for recovery of a sum of money, and obtained a decree by the Collector of Patna. The defendant appeals to the Court to prosecute a suit in the Civil court to reverse the decision, but then the Plaintiff's Advocate in this district, declines to receive the case, on the grounds that according to the law of the Court, the suit should be heard by the Court of the Plaintiff's village. *Reply*.—I am directed to inform you that the case mentioned in your communication should be heard by the Court of the Myynpore zillah, in which jurisdiction the cause of action arose; the civil authorities of zillah Patna, having no jurisdiction in the village of Dhukrao, cannot take cognizance of the plaintiff's claim.—*Con* 915, *West. C.* 21st Nov., *Cal* 10th Dec., 1811.

385. An action brought by a husband against his wife for refusal to live with him, should be instituted in the zillah where her home is, and not where the marriage was solemnized.—*S. D. A. Sum. Cases*, 17th March 1809, p. 78.

386. Plaintiff advanced money to defendant in Backergunge on the *mortgage* of lands in another zillah, and after the term of the deeds has expired, demanded the money in the Backergunge court, and obtained a judgment. The Provincial court reversed, thinking the suit only cognizable in the zillah where the land is situated. The Sudder dewanny adawlut rule, that the suit, being specifically for money, is clearly cognizable in Backergunge.—*S. D. A. Sel. Rep.* 14th May 1810, vol. 1, p. 301.\*

387. I request the instructions of the Sudder dewanny adawlut on the following questions:

A person sues A., B. and C., natives of Bengal, in the court of the zillah Judge within whose jurisdiction in Bengal the cause of action arose. A. and B. are resident within the limits of the jurisdiction of the District court in which the action is brought, C. is resident within the town of Calcutta, having no agent of any kind. 1st. Is such suit against A., B. and C. cognizable by the Zillah court? 2d. If it is cognizable by the Zillah court, through what channel, and in what

In what court the suit is to be instituted, and where the parties reside, or where the cause of action arose, and where the defendant is resident.

Action of husband against a wife for refusing to live with him.

A suit for money advanced on mortgage must be instituted in the zillah in which the money was lent.

A suit is cognizable against A., B. and C. in the zillah court in which the cause of action arose, though C. is a resident of Calcutta, having no agent in the district.

\* Section 8, Regulation 3, 1793, empowers the Zillah and City Magistrate courts to take cognizance of all suits and complaints of a civil nature against persons amenable to their jurisdiction, provided the lands, or other real property to which the suit or complaint may relate, shall be situated, or, in all other cases, the cause of action shall have arisen, or the defendant at the time when the suit may be commenced, shall reside, or a fixed inhabitant, within the limits of the zillah or city over which their jurisdiction may extend.

mode is the notice prescribed by Section 2, Clause 3, Regulation 2, 1806, to be served on C. to call on him to defend the cause? and, in the event of inability to serve the notice, how is the proclamation to be made which is prescribed for such cases?—*Reply*.—I am directed by the Court to acknowledge the receipt of your letter of the 18th ultimo, submitting two questions for the orders of the Sudder dewanny adawlut. In reply to the first I am directed to state that the suit therein referred to is cognizable by the Zillah court. In reply to the second, that the notice or proclamation should be forwarded through a peon to the Register of this Court, who will cause it to be served by the nazir of the court, in conjunction with the peon by whom it is delivered. The inability of the Court to issue process in the town of Calcutta noticed in the Court's letter of the 18th July, 1828, to a former Judge of your court, extends only to compulsory process (as arrest of the person, realization of money decreed, &c.) and not to process issued for the information of the party, which it is the practice of the court to issue. The zillah Judge should decide the case *ex parte*, if the defendant do not appear, and in the event of a decree being passed against him should execute it on any property belonging to him which may be found beyond the limits of the town of Calcutta, and if ignorance of the institution of the suit should then be pleaded by the defendant, a review of the judgment might, on proof of the plea, be granted.—*Con.* 721, *Cal. C.* 5th Oct., *West. C.* 9th Nov. 1832.

If the defendant reside in Hooghly, and have no property in Tipperah, a suit for arrears of rent of an estate in Tipperah may be entertained in the Hooghly court.

388. It would appear that the estate, for the balance of the produce of which the present action is instituted is actually situated in the district of Tipperah. The defendants however have no property in that district. All their property lies within the district of Hooghly, appendant to the Calcutta Provincial court, where they likewise reside. The *quboolcent* also, upon which the claim is founded, was executed within the town of Calcutta in the jurisdiction of the Supreme court. The plaintiff's petition of plaint, with reference to the amount of claim is drawn upon a stamp of the value of 750 rupees, and was filed in this court on the 1st of August 1826. The petition of defence is written on a stamp of the value of four rupees.—In reply I am directed to communicate to you the opinion of the Court that the suit being for a sum of money, and the defendants all residing in zillah Hooghly, your court is competent to take cognizance of it.—*Con.* 739, 23d Nov. 1832.

In a suit for 63 villages of which 61 were situate in Beerbhoom and 2 in Moorsshedabad, it was deemed proper that the suit should be tried in the former district, where the greater part of the property lay.

390. A suit has been instituted in this court, having reference to the farm of sixty-three villages, sixty-one of which are situated in the Beerbhoom zillah, and only two belong to Moorsshedabad. It happens however, that although, as regards the Foujlary, the sixty-one villages in question are under the Magistrate of Beerbhoom, yet the revenue of the whole of them is paid (under, I presume, a special authority,) into the collectorate of Moorsshedabad, and it is owing to the latter circumstance that the suit has been admitted into the court of this city. As the propriety of hearing the suit in question here, merely because the revenue of all the villages (which are within the limits of another district) happens to be paid into this treasury, seems questionable, considering the tenor of Regulation 3 of 1793, especially of Section 8, I wish to ascertain how, in the judgment of the superior court, I ought to proceed.—In reply to your letter of the 8th instant I am directed by the Court to inform you that, under the presumption that the greater part of the villages which form the cause of action of the suit therein alluded to, are situated within the jurisdiction of the Civil court of Beerbhoom, they deem it proper that the suit should be tried in that court, and request that you will transfer it for that purpose with a copy of this letter to the Judge of Beerbhoom.—*Con.* 969, 31st July 1835.

In a boundary dis-

390. In a dispute respecting the boundary of two estates situated in different zillahs, held

that the summary award of one court is insufficient to render the contested lands exclusively subject to its jurisdiction, and invalidate, under Section 8, Regulation 3, 1798, a regular suit, which the party cast may institute in the court of the zillah within which he maintains them to be situated.—*S. D. A. Sel. Rep. 15th Dec. 1823, vol. 3, p. 282.*

*Suits regarding two estates which lie in different districts, the summary award of one does not bar a regular suit in the other court.*

391. In a case of goods consigned for sale by a party in one district to a mercantile house in another district, the goods sold in the latter, and the proceeds carried to the credit of the consigner to meet alleged demands due by him to the consignee, it was held that the action should have been brought in the court of the district of the consignee, and not of the consigner.—*S. D. A. Sel. Rep. 30th July 1838, vol. 6, p. 237.*

*Where goods have been consigned by a party residing in one district to merchants residing in another, any action must be brought in the court of the latter district.*

392. Held that the court in which a suit for a portion of property, claimed under a disputed title, should be instituted, is to be determined with reference to the value of the title, and not to the value of the portion sued for.—*Remark.*—The principle which regulated the judgment of the court in regard to the jurisdiction of the Moonsiff, had been previously recognized by the Circular order No. 16, Vol. 2, dated 31st August, 1832.—*S. D. A. Sel. Rep. 28th Feb. 1846, vol. 7, p. 255.*

*Suit for a portion of property claimed under a disputed title.*

### SECTION XXXV.

#### *Jurisdiction of the Civil Courts—Suits regarding Property which form distinct Estates or Estates which lie in different Districts.*

393. A question having arisen as to the legality of dividing a claim of inheritance, resting on one and the same plea, into several suits, on the ground of the property sued for forming parts of distinct estates, or being situated in different jurisdictions, I am directed to acquaint you that it has been ruled by the Court as consistent with the spirit and meaning of the existing Regulations, that suits founded on right of inheritance should include the entire claim arising out of the same cause of action; and that, in the event of the property being situated in two or more jurisdictions, the suit should be brought in the court in whose jurisdiction the greater portion may be contained.—*Cir. Ord. Cal. and West C. 11th Jan. 1839, par. 1.*

*Suits founded on right of inheritance must include the whole claim. And be brought in the court in whose jurisdiction the greatest portion lies.*

394. The Court deem it scarcely necessary to add that the rule laid down in the first paragraph of this letter, cannot of course affect the rights of other individuals, having claims on the same property, who may not have joined in the plaint.—*Ibid, par. 4.*

*Rights of other individuals not affected thereby*

395. If the property be situated within the limits of the same Zillah court, but in the jurisdiction of different Moonsiffs, and the amount or value of the whole property do not exceed that of which those officers are competent under the Regulations, to take cognizance, the Moonsiff, in whose court the suit may be brought under the rule above laid down, previously to issuing any process on the petition of plaint, should apply to the Judge to whom he may be subordinate, for authority to try the same, but where the property may be situated within the limits of different Zillah courts, he should apply to the Court of Sudder dewanny adawlut through the Judge, for authority to proceed with the case: and the same rule should be observed by the Judge, as regards any suits of the latter description which may be instituted in the first instance in his court.—*Ibid, par. 2.*

*Rule when the property lies in the jurisdiction of different Moonsiffs and of different zillahs.*

396. When the property may be situated partly in the Lower and partly in the Western

*Rule when the pro-*

party has partly in the lower and partly in the western provinces.

provinces, the application of the Judge in whose court the suit may be brought, should be made to the Court of Sudder dewanny adawlut to whom he may be subordinate, and who, after communicating with the other court, will issue the necessary instructions for the trial of the case.—*Car. Ord. Cal. and West. C. 11th Jan. 1839, par. 3.*

The reason of the above rule.

397. In adopting the foregoing construction the Court have been influenced by the following amongst other reasons, that the opposite practice would not only constantly give rise to conflicting judgments passed by different courts, probably at or about the same time, in regard to separate portions of an estate, included in the same cause of action, but, would, moreover, frequently have the effect of entirely altering the original jurisdiction of the courts in respect to the cognizance of such claims, and might in many instances, operate to the serious injury of the defendant by depriving him of his right of appeal to this court, and occasionally, indeed, to the Queen in council.—*Ibid, par. 5.*

## SECTION XXXVI.

### *Jurisdiction of the Civil Courts—Suits not cognizable by the Civil Courts.*

No Judge can hear or try a case in which either party is his creditor.

398. Any Judge, European or Native, is prohibited from hearing or trying a cause in which either of the parties may be his creditor.—*Car. Ord. Cal. and West. C. 26th March 1832.*

Judges not to entertain suits which may have been decided by any former Judge or Superintendent having competent jurisdiction.

Doubts respecting the competency of the former jurisdiction, to be submitted to the S D A.

399. The Zillah and City courts are prohibited entertaining any cause, which, from the production of a former decree, or the records of the court, shall appear to have been heard and determined by any former Judge, or any Superintendent of a court having competent jurisdiction. If any doubt should arise respecting the competency of the former jurisdiction, the Judges are to report the circumstances to the Sudder dewanny adawlut, and wait the instructions of that Court.—*Reg. 3, 1793, Sect. 16.—Benares, Reg. 7, 1795, Sect. 10.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 10.*

A Judge on proof furnished by the records of his own office of the institution of a prior suit by A., is competent to dismiss a suit instituted by B., for the same cause of action, without issuing notice on A., to appear and answer thereto.

400. A. sued B. for the recovery of a village, which at the time of the settlement, B. contrived to get wrongfully included in his own talook as part and parcel thereof. The Court decreed the village to A., directing its disjunction from B.'s estate and its being separately assessed by the Collector. But B. having appealed against the decision, execution was stayed, and, pending the appeal, the whole of B.'s talook was sold for balance of revenue, and the purchaser having been put in possession of the village in question along with the other part of the property, B. declined proceeding with the appeal, and it was accordingly dismissed. B. however eventually succeeded in getting the public sale set aside by the Courts of judicature, and A., who came forward as a third party in the case claiming the village, was referred to a regular suit against B. I am desirous therefore of obtaining the opinion of my colleagues whether, under the foregoing circumstances, the decree obtained by A. was not final and conclusive against B., and whether on the sale of B.'s estate being annulled it ought not to have been executed, instead of A.'s being referred to a new suit to establish his right to that which had already been adjudged to him by a competent tribunal, and the appeal from which had been dismissed on the default of B. to proceed with it. Connected with this case I further solicit the opinion of the Judges upon another point, namely, A. having in pursuance of the above order brought an ac-

tion against B. for the recovery of the village, a decree was passed by the Sudder Ameen in his favor, and on B.'s appealing from it the zillah Judge discovered that B. after the institution of A.'s suit, and notwithstanding he was in possession of the village, had also filed a suit against A. to have himself declared the *malik* of it. The question therefore is, whether the zillah Judge, merely upon having B.'s petition of appeal before him, and without deciding it, was competent, under the rules contained in Section 16, Regulation 3 of 1793, to dismiss B.'s suit without issuing the prescribed notice to A. to appear and answer to it. The words of the section in question bearing upon the point are as follows—"The Zillah and City courts are prohibited *enter-taining* any cause which, from the production of a former decree or the records of the court, shall appear to have been heard and determined by any former Judge or any Superintendent of a court having competent jurisdiction." With reference to the first question the Court were of opinion that the decree obtained by A. was final, and ought to have been executed. The question involved in the concluding paragraph was forwarded for the opinion of the Western Court.

To this the Western Court replied: The only point on which the Calcutta Court would appear to desire the opinion of this court is as to what was the proper course of proceeding to be observed by the Judge in regard to the disposal of the claim preferred by B., on discovering that a suit had already been instituted by A. in reality for the same cause of action, and which was at that time pending in appeal before him from the decision of the Sudder Ameen passed in favour of the plaintiff. On this point the Court at large observe, that as the Judge had proof before him of the institution of the prior suit by A. which was furnished by the records of his office, they are unanimously of opinion with the majority of the Judges of the Calcutta Court, that under the rule laid down in Section 16, Regulation 3 of 1793, he was fully competent, on the information before him, to dismiss the suit of B. without issuing any notice to the other party to appear and answer thereto.—*Con. 999, West. C 5th Feb. 1836.*

401 A suit founded on a claim of inheritance having been dismissed, it is not competent to the courts to entertain another action by the same individual on the same grounds, though the persons sued, and the amount claimed be different.—*S. D. A. Sel. Rep. 13th April 1824, vol. 3, p. 335.*

Courts cannot try a second suit on a claim of inheritance, when one has been already dismissed.

402. The courts are not competent to decide a new suit contrary to the provisions of a former final decree, relative to the same property. The merits of that decree cannot be gone into.—*S. D. A. Sel. Rep. 25th April 1826, vol. 4. p. 146.*

Courts cannot decide a new suit contrary to a former final decree relative to the same property.

103. Held, that the courts are not at liberty to question the merits of a final decision passed by any authority having competent jurisdiction, whether on the allegation of such decision having been contrary to law or wrong as to the merits. The decisions here alluded to were passed by the Patna council in 1777, and by the Patna City court in 1796.—*S. D. A. Sel. Rep. 17th April 1826, vol. 4, p. 137.*

Courts cannot question the merits of a final decision of any competent authority, on any grounds whatever.

404. If a suit shall have been instituted in the Court of Dewanny adawlut of any zillah or city in which it may have been cognizable, no other Zillah or City court is to entertain a suit for the same cause of action; and on proof being made in the court in which the second suit may be commenced, that a prior suit for the same cause of action has been instituted in another Zillah or City court competent to try it, the court in which the second suit may be brought is to dismiss it with costs to be paid by the party so suing. And if any person shall have commenced a suit in the Dewanny adawlut of any zillah or city,

No court is to receive a suit previously instituted in another

and whilst that suit is depending, or after a decree may be passed in it, shall commence another suit in any other Zillah or City court of dewanny adawlut for the same cause ; or if any person shall commence a suit in any Zillah or City court of dewanny adawlut which shall appear to the Judge to be frivolous, vexatious, or groundless, he is not only to dismiss the suit, with such costs as he may deem it equitable to award against the plaintiff, but is to fine him in such amount as he may think proper, upon a consideration of the nature of the case, and the situation and circumstances in life of the offender, and commit him to close custody until he pays the fine.—*Reg. 3, 1793, Sect. 12.—Benares, Reg. 7. 1795, Sect. 7.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 9.*

A debt having been contracted in Nagpore, where the defendant continues to reside, the subsequent execution of a bond at Allahabad, does not authorise the Judge to take cognizance of the suit, as that instrument cannot be considered to be the cause of action, but merely evidence of the debt which is the cause of action.

405. The Court of Sudder dewanny adawlut have had before them your letter, dated the 8th instant, together with its enclosed copy of a petition of plaint instituted in your court by Ramchunder Waugh, and requesting the Court's opinion as to whether the suit is cognizable by you, "the debt having been originally incurred in Nagpore, the bond which is the immediate ground of the present action having been executed at Allahabad, and the defendants being at the date of the institution of the suit resident at Nagpore."—In reply, I am desirous to acquaint you, that under the circumstances stated, the Court do not perceive any ground on which you can assume jurisdiction. The cause of action, that is to say, the debt, originated in a foreign territory, where the defendants still continue to reside. The subsequent execution of the bond within your jurisdiction is immaterial to the present question, as that instrument cannot be termed the cause of action, being merely evidence of the debt, which is the cause of action.—*The Court are therefore of opinion that you should not take cognizance of the suit.—Con. 351, 24th Jan. 1823.*

Suits under a fictitious name prohibited.

406. The Sudder dewanny adawlut direct that you will issue instructions to the several zillah and city Judges, subject to your division, directing them to affix a publication in their respective cutcherries, declaring that any person who shall hereafter institute a suit in their courts under a fictitious name, will be liable to be nonsuited.—*Cir. Ord. 29th July 1809.*

But a plaintiff may sue for money lent by himself on a bond executed in the name of another.

407. The Circular order of the 29th June, 1809, prohibiting the institution of suits under fictitious names, does not refer to the case of a plaintiff suing in his own name for recovery of money lent by himself, upon a bond executed in the name of another.—*S. D. A. Sel. Rep. 19th Sept. 1836, vol. 6, p. 108.*

Suit brought on the part of a farzi dismissed.

408. Judgment of nonsuit passed with reference to the Regulations generally and Circular order No. 20, July 29th, 1809, because the action was brought on the part of a *Farzi*—(*Note by the Reporter*)—In Arabic *Faraz*, among other meanings, has that of proposition. whence *farzun*, by way of *proposition*, i. e. hypothetically. The word *Farzi* (thus derived) is used to denote an unreal person,—whether as non-existent or imaginary, or existent but not interested, i. e. a trustee. Not to risk a construction the reporter has not translated the term. The Circular order refers to the institution of suits in fictitious names.—*S. D. A. Sel. Rep. 22d July 1833, vol. 5, p. 314.*

Of what suits the zillah court of the 24-purgunnahs is prohibited taking cognizance, as coming

409. The Dewanny adawlut of the zillah of the Twenty-four Purgunnahs, is not to receive or entertain any suit, under any pretence whatever, relating to any land, house tenement, or hereditament. nor any dispute regarding the boundaries of lands, houses.

tenements or hereditaments, situated within the town of Calcutta, (which, for the purpose of this rule, is declared to be bounded by a line drawn by the bridge and nullah of the Baugh Bazar, or Cow-Cross, the Marhatta entrenchment, and the road adjoining to it, continued to the westward of the Collighaut road, the Govindpore nullah, and the river.) nor any suit whatever against a person who may be an inhabitant of Calcutta at the time the suit may be instituted, or may become a resident within the limits of the town after the suit may be commenced. The court is commanded not to intermeddle with, or take cognizance of the suits abovementioned, which are to be considered entirely exempt from its jurisdiction. But the prohibitions contained in this section are not to be construed to extend to preclude the Court of Dewanny adawlut of the zillah of the Twenty-four Purgunnahs entertaining any suit concerning marriage or caste, in which no money or other valuable thing may be demanded or decreed, although the cause of action shall have arisen, or the defendant may reside, or shall have resided at the time the suit commenced, within the limits of the town of Calcutta.—*Reg. 3, 1793, Sect. 17.*

within the jurisdiction of the supreme court of judicature

Exception to the rule.

410. A suit for the possession of property within the jurisdiction of the Civil court of the 24-Purgunnahs, beyond the limits of the town of Calcutta, against a resident of Calcutta, is cognizable by the Zillah court of the 24-Purgunnahs.—*Con. 991, Cal. and West. C. 8th Jan. 1836.*

Suits cognizable by the Z court of the 24-purgunnahs

411. Whereas, by Section 17. of Regulation 3 of 1793, of the Bengal code, it was amongst other things provided that the Dewanny adawlut of the zillah of the Twenty-four Purgunnahs should not receive or entertain any suit whatever against a person who might be an inhabitant of Calcutta at the time the suit might be instituted, or might become a resident within the limits of the town after the suit might be commenced. and, whereas inconvenience has arisen in consequence of persons escaping from the jurisdiction of the Dewanny adawlut of the said zillah of the Twenty-four Purgunnahs after suits have been commenced therein, and it is expedient to prevent such inconvenience: It is therefore hereby enacted, that so much of the said Regulation as is hereinbefore recited be repealed.—*Act XXV. 1843.*

Portion of reg. 3, 93, sec. 17, repealed

412. The pledge of property out of Calcutta, as security for a debt contracted in Calcutta by a party resident in Calcutta, does not render him subject to the jurisdiction of the Zillah court as to the debt.—*S. D. A. Sel. Rep. 5th Jan. 1842, vol. 7, p. 69.*

A party residing in Calcutta, pledging property out of the town for a debt contracted in it, not subject to the jurisdiction of the zillah.

413. The Sudder court being asked, whether the Civil court is competent to receive a suit for actual costs against a plaintiff whose complaint had been dismissed in a Criminal court, replied "that the Civil courts are not authorized to take cognizance of such suits, as Clause 3, Section 29, Regulation 7, 1803, authorizes the Criminal courts to adjudge reimbursement of costs actually incurred upon a prosecution before them by either of the parties thereto, if they shall consider such reimbursement just and equitable. But that if a Magistrate, from oversight, have omitted to order a reimbursement of costs to the party whom he may think justly entitled thereto, he is at liberty to supply the omission by a subsequent order, upon application from the party for that purpose."—*Con. 367, 2d July 1824.*

Civil courts are not competent to take cognizance of a suit for actual costs against a plaintiff, whose complaint was dismissed by a criminal court.

414. The Court having reason to believe that doubts exist as to the legality or otherwise

Cases decided by



criminal authorities under sec. 6, reg. 7, 1819, not open to a civil action

of admitting civil actions to contest the awards of the criminal authorities under the provisions of Section 6, Regulation 7, 1819, I am directed to communicate to you their opinion, that cases decided by the criminal authorities under the rules laid down in that section are not open to a civil action.—*Cir. Ord. Cal. C. 31st Aug., West. C. 13th Nov. 1838.*

In a case of fraudulently filing a petition in the civil court, the civil judge cannot commit for trial, but should refer the case to the magistrate, who will commit or not as may appear to him advisable.

415. The Court ruled that in the case of a defendant charged with presenting or filing a petition in the Civil court with the fraudulent intent of obtaining money already paid to him, the Judge is not competent to commit the accused for trial, but that after completing the investigation as far as may be in his power, he should transmit the papers to the Magistrate, stating his opinion on the case, and leaving the Magistrate to commit, or not, as may appear to him advisable.—*Con. 925, West. C. 9th Jan., Cal. C. 27th March 1835.*

On a compromise of theft under sec. 7, reg. 12, 1818, the civil court cannot entertain a suit by the injured party to compel the offender to restore the value of the property stolen

416. I am directed to state in reply, that the particular description of offences mentioned in the last section of Regulation 12, 1818, must still be viewed as public crimes; that it is incumbent on the landholders, and on the police, to report them; that, where the injured party declines prosecuting, the Magistrate may still, if he think fit on a view of the nature of the case, direct a public prosecution. If, therefore, those cases only go unprosecuted, which the Magistrate thinks fit to pass over, it must follow, that the Magistrate should be able to prevent any material injury arising to the police from private compromises. As to whether a compromise between the offender and the injured party, the consideration being on the one side, forbearing to prosecute, and, on the other, restitution of value taken, is a contract to which the Civil court should give effect, I am directed to answer the questions in the negative; on the ground that it is clearly contrary to public policy that such an encouragement to obstruct the course of criminal justice should be held out; and it is not clear, that the last section of the Regulation, in giving to the injured party the discretion it has done, had in view any other motives of forbearance, than tenderness to the offender, or unwillingness to spare the time and trouble of prosecuting.—*Con. 318, 7th July 1820.*

A summary award by a magistrate of wages to a servant under sec. 6, reg. 7, 1819, cannot be contested by a civil action, nor can a civil court issue an injunction to the magistrate to stay execution of his order.

417. I am directed by the Court to observe that in all cases in which it has been the intention of the Legislature to render a summary decision subsidiary to a suit in the Civil courts, the Regulations contain specific provision to that effect, as for instance, in cases coming under the provisions of Regulation 15 of 1824, no such provision is however made as regards cases of the nature of those specified in Section 6, Regulation 7 of 1819; and they are therefore of opinion that cases decided by the criminal authorities under the rules laid down in that section are not open to a civil action. The Civil court of course can have no power to issue an injunction to a Magistrate for the purpose of stopping execution of his order.—*Con. 1158, West. C. 22d June, Cal. C. 13th July 1838.*

Suits for the recovery of costs incurred in criminal actions not to be received by the civil courts

418. Held that the Civil courts are not authorized to take cognizance of suits for the recovery of costs incurred in criminal cases.—*S. D. A. Sel. Rep. 2d July 1841, vol. 7, p. 40.*

Civil courts cannot stay a prosecution for forgery in the criminal court

419. The Civil courts cannot interfere to stay the proceedings in the Criminal court in the prosecution of a case of forgery at the instance of the Collector.—*Rep. Sum. Cases, 19th Nov. 1846, p. 87.*

A bidder at a public sale, who has been fined by a collector,

420. Held on a reference from the Judge of Sylhet that a bidder at a public sale, who has been fined by a Collector, cannot institute a regular suit against that authority in the Civil

court to obtain a return of the fine, supposing it to have been levied by distress or otherwise.—*Con. 1201, Cal. C. 15th Feb., West. C. 8th March 1839.*

cannot institute a suit against that officer in the civil court to obtain a refund of the fine.

421. The Court of Sudder dewanny adawlat have had before them your letter, dated the 27th ultimo, together with its enclosure from the Register of your district, requesting information as to the mode of proceeding to be adopted, in the event of a suit being preferred against him for an act done by him in his official capacity, under Section 10, Regulation 8, 1819.—In reply, I am desired to observe, for the information and guidance of yourself and of your Register, that there appearing to be no provision either in Section 10, Regulation 3, 1793, or any other enactment, which declares a Register amenable to the jurisdiction of a *Zillah* or City court for an act done by him in his official capacity, and the specific Regulation also, under which the Register of Burdwan presides at the sale of *putnee* tenures, not containing any provision of this nature, the Court are of opinion, that a suit will not lie against such officer, and should not be admitted.—*Con. 440, 8th Dec 1826.*

An action will not lie against a register for acts done in his official capacity under the rules contained in reg. 8 of 1819, for the sale of *putnee* talooki.

422. An order for the confiscation of an estate, passed by the revenue authorities, and confirmed by the executive Government, under the Regulations which were in force before those enacted in 1793, is not liable to be set aside or altered by the courts since established.—*S. D. A. Sel. Rep. 6th May 1817, vol. 2, p. 235.*

Confiscation of estates before 1793, cannot be reversed by the courts since established.

423. The power of altering the public assessment is not vested by the Regulations in the Civil courts of judicature; but is reserved exclusively to the Governor General in Council.—*S. D. A. Sel. Rep. 7th June 1817, vol. 2, p. 242.*

Civil courts cannot alter the public assessment of land.

424. Claim, by a purchaser of part of an estate at a public sale, to an abatement in the assessment, on the ground that the papers exhibited at the time of sale, detailing the particulars of the lands, were erroneous, rejected, on the ground that the power of altering the public assessment in such cases (which is reserved to Government by Section 29, Regulation 7, 1799, under the conditions there stated) is not vested by the Regulations in the Civil courts.—*S. D. A. Sel. Rep. 18th Aug. 1806, vol. 1, p. 155.*

Idem.

425. The Civil courts are not authorized to interfere with the revenue authorities, or to pass orders, in a summary manner, in matters relating to the settlement of estates.—*S. D. A. Sel. Rep. 25th Sept. 1818, vol. 2, p. 278.*

Idem.

426. A Civil court cannot, notwithstanding the institution of a suit for it, summarily interfere to stay the sale by a Collector of property pledged as security in the revenue department.—*Rep. Sum. Cases, 14th July 1846, p. 81.*

Civil courts cannot summarily stay a collector's sale of property pledged as security in the revenue department.

427. The Civil courts have no authority to annul, by a summary order, a public sale of lands made by a Collector.—*S. D. A. Sel. Rep. 8th Jan. 1819, vol. 2, p. 284.*

Nor summarily annul a public sale of lands by the collector.

428. The Court direct me to observe to you, that as all claims upon Government to pensions are cognizable only by the Collectors under the provisions of Regulation 24, 1803, subject to an appeal to the Board of Commissioners and the Governor General in Council, the case to which the above papers relate does not appear subject to the cognizance of your court.—*Con. 230, 12th Jan. 1816.*

Claims to pensions payable by government are not cognizable by the civil courts.

429. Claims, similar to those wished to be preferred by Mohumud Nusseer, are cognizable only by the revenue authorities, that therefore the suit which the person above men-

A collector cannot be sued for declining to pay a pension, the

original title to which has not been previously recognized and confirmed by the revenue authorities, or Government.

tioned is desirous of bringing in your court against the Collector of Allahabad cannot be legally entertained by your court. The Court observe, from the proceedings held by your senior Judge on the 3d April, 1821, that it is therein distinctly stated, that the pension granted to Mohummud Nusseer's father, Shah Jaroolah, was not in commutation of, or indemnification for, land, so as to bring the case within scope of the rule of Section 2, Regulation 24, 1803, which circumstance alone is sufficient to exclude the court from receiving and trying such claim preferred against the Government. The Court further remark, that even had Mohummud Nusseer's claim been receivable under the section of the Regulation above cited, it would have been inadmissible under the explanation given to that section by Section 2, Regulation 6, 1817, which declares, that it was not thereby intended to authorize the Courts of civil justice to take cognizance of claims to any pensions of the nature alluded to in that section, the original title to which had not been previously recognized and confirmed by the revenue authorities, or by Government; whereas it would appear, from the acting Secretary's letter to the Board of Commissioners, under date the 23d February, 1821, that, in the case in question, the claim of Mohummud Nusseer and others had been adjudged by the Board of Commissioners in the year 1808, to be inadmissible. As the Government cannot in such a case be sued, so it is equally clear from the 16th Section of Regulation 24, 1803, that the Collector cannot be liable to an action for declining to pay an unauthorized pension.—*Con. 343, 6th July 1821.*

Courts cannot interfere with an order of the resumption courts.

430. An action, the real, though not avowed, object of which is to reverse a decree of the courts for the trial of resumption suits, cannot be heard by the ordinary courts.—*S. D. A. Sel. Rep. 4th March 1846, vol. 7, p. 256*

Idem

431. A party considering himself aggrieved by an order of the resumption courts defining boundaries, of a resumed mehal, cannot apply to the Civil courts for redress.—*Rep. Sum. Cases, 17th July 1847.*

Suit to set aside certain summary orders passed in execution of a decree cannot be entertained by the zillah court.

432. The plaintiff sued in zillah Patna to set aside certain summary orders passed in execution of a decree in the Zillah court of Behar. Held, that the action had been irregularly brought, first, in point of local jurisdiction: and secondly, in point of general jurisdiction under Construction No. 1129.—*S. D. A. Sel. Rep. 12th Nov. 1840, vol. 6, p. 303.*

Miscellaneous orders passed in the execution of a decree, carrying into effect the original intentions of the court, do not constitute a new cause of action.

433. Held by the Western Court, in concurrence with the Calcutta Court, that any order passed in the execution of a decree in regard to mesne profits, interest or other matter in dispute between the parties to the suits which may be involved in the decision, must be looked upon as a necessary process for carrying into effect the original intentions of the court passing the decree, in respect to a point, in which it may, in fact, be said already to have pronounced a formal judgment, and cannot therefore, be considered as constituting a new cause of action.—*Con. 1129, Cal. and West. C. 9th Feb. 1838.*

Zillah judge cannot summarily prohibit a hant.

434. The summary prohibition by the zillah Judge to establish a hant, because it interfered with a neighbouring hant, overruled by the Sudder dewanny adawlat.—*Rep. Sum. Cases, 22d July 1840, p. 46.*

Claim for the title deeds of property not within the jurisdiction of the sudder court, not cognizable by it.

435. A claim for the title deeds of property, not within the jurisdiction of the Sudder dewanny adawlat, dismissed as not cognizable by the Court.—*S. D. A. Sel. Rep. 29th Dec. 1846, vol. 7, p. 144.*

436. The estate of a lunatic consisting exclusively of personal property, there is no law which authorizes the intervention of the Civil courts.—*Con. 1311, West. C. 13th Oct., Vol. C. 5th Nov. 1841.* The civil courts cannot interfere with the estate of a lunatic consisting only of personal property.

437. The Civil courts cannot take cognizance of claims for perquisites of the office of *Chowdree*.—*Remarks*.—The following is the Circular of the 6th May, 1844, adverted to in the foregoing report: "By the Construction of the Nizamut adawlut No. 816, dated the 23d August, 1833, Magistrates were declared competent to remove the *chowdrees* of the several trades and professions." The Court having reconsidered the subject of this Construction, and the principle which it involves, are persuaded that it is based on an incorrect view of the *chowdree's* position, and of the relation in which he stands towards the members of the trade or profession on the one hand and the Government on the other. The *chowdree* is the head of the profession, selected and appointed by its members in the exercise of their free choice, with which the Government have no power to interfere, and with them rests the option of dispensing with his services, whenever he may have forfeited their confidence, by abusing the influence incident to his position, or acting detrimentally to their interests. The Court are pleased, therefore, with the sanction of Government, to declare Construction No. 816 superseded, and to prohibit any interference on the part of the Magisterial authorities in the election, recognition, or removal of *Chowdrees*, of whatever trade or profession."—*N. D. A. Sel. Rep. 28th Nov. 1846, vol. 7, p. 282.* The civil courts cannot take cognizance of claims for the *chowdree's* perquisites.

438. The Court are pleased to intimate that proclamations of a general nature should not be issued by the civil authorities without previous sanction of the measure by the Government or by this Court as the case may be.—*Cur. Ord. 30th July 1847.* General proclamations not to be issued by the civil courts without leave.

439. In a case in which the principals, who had obtained an order for possession of property under Regulation 5, 1799, made over such property temporarily to their sureties, it was held that the Civil court could not summarily interfere in a dispute between the principals and sureties, in regard to the proper discharge of the trust.—*Rep. Sum. Cases, 1st June 1847.* Civil courts cannot summarily interfere in a dispute between principals and sureties regarding trusts.

440. The Zillah and City courts are prohibited interfering in any respect in any cause or matter of a criminal nature, declared cognizable by the Magistrates of the several zillahs and cities, the Courts of circuit, or the Nizamut adawlut, or any other courts for the trial of cases of a criminal nature, that now exist, or which may be hereafter established, excepting for contempt and perjuries committed in open court, as prescribed in Sections 14 and 21, Regulation 4, 1793.—*Reg. 3, 1793, Sect. 18 Benares, Reg. 7, 1795, Sect. 11.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 11.* Courts prohibited taking cognizance of any matters of a Criminal nature.

Exceptions to the rule.

## SECTION XXXVII.

### *Jurisdiction of the Civil Courts, in reference to matters cognizable in Military Courts of Request.*

441. Actions of debt and all personal actions against officers, soldiers, retainers of the description mentioned in Section 2 of this Regulation, persons registered as attached to sudder bazars or bazars of corps, or mehial servants of officers, shall be cognizable before a Military court, and not elsewhere; provided the value in question does not exceed sicca rupees two hundred and the defendant was a person of the description abovementioned, when the cause of action arose; such courts shall be composed of European How actions of debt or other personal actions not exceeding 200 rs. against officers, soldiers, or others, are to be tried and determined.

officers when European officers may be parties concerned, and in all other cases, of Native officers with an European officer to superintend and record the proceedings, and shall in all practicable cases consist of five members, and in no instance of less than three members, one of whom shall preside. Such court shall be convened monthly by the commanding officers of corps and stations, and shall be holden on some convenient day before the issue of the pay for each month, and it shall be competent to such courts upon finding any debt, or damage due, either to award execution generally, or to direct as they shall see fit, that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor, either in the current or any future month. Where the execution is awarded generally, the debt if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the limits of the garrison, cantonment or military bazar, under a written order of the commanding officer grounded upon the judgment of the court; and if sufficient goods are not found within the limits, the debtor shall be arrested by like order of the commanding officer, and imprisoned in some convenient place of confinement within the limits of the garrison, cantonment or military bazar, for the space of two months, unless the debt be sooner paid, and his goods, if found within the limits at any subsequent time shall be liable to be seized and sold in satisfaction of the debt, under a written order of the commanding officer.

—*Reg. 20, 1810, Sect. 22.*

Provisions of reg. 20, 1810, or other regulations in force declared not applicable to debts due from British subjects attached to the army.

442. Such parts of Regulation 20, 1810, or of any other Regulation in force, as provide for the cognizance by a military tribunal of actions of debt, and all personal actions not exceeding in value or amount the sum of 200 rupees, are hereby declared not to be applicable to cases of debt, or other personal actions in which the party sued may be a British subject attached to the army within the descriptions of persons specified in Section 57 of Statute 4, Geo. IV. Cap. 81, by which amongst other things it is enacted, that in all places where the said Company's forces now are or may be employed, or where any body of His Majesty's forces may be serving with the forces of the said Company, situate beyond the jurisdiction of the Court of requests at the city of Calcutta, actions of debt, and all personal actions against such officers, non-commissioned officers, or soldiers, all persons licenced to act as sutlers to any corps or detachment, or at any station or cantonment, or other persons amenable to the provisions of this Act, or resident within the limits of a military cantonment, shall be cognizable before a Court of requests composed of military officers, and not elsewhere, provided the value in question shall not exceed 400 sicca rupees, and that the defendant was a person of the above description when the cause of action arose.—*Reg. 20, 1825, Sect. 3, Cl. 1.*

British subjects attached to the army declared still amenable to local courts for debts exceeding 400 rs.

443. Officers and soldiers being European British subjects will still be subject to the jurisdiction of the local Courts of civil justice, under the provisions of Section 107 of Statute 53, Geo. III. Cap. 155, except in actions of debt and personal actions not exceeding 400 rupees in value or amount —*Ibid, Cl. 3.*

To what extent the

444. The provisions of Section 22, Regulation 20, 1810, will still remain in force

so far as they relate to actions of debt and personal actions against officers, soldiers and retainers of the description therein specified or referred to, not being European British subjects within the provisions referred to in the first clause of this section.—*Ibid*, Cl. 4.

445. It appears that there are two rules in these cases; one, for European British subjects registered as attached to bazars and residing in cantonments, British soldiers, officers, &c.; and the second for European foreigners, Native soldiers, Natives, &c. registered and residing in cantonments: that with regard to the first, the 4th of Geo. IV. is to be our guide, and 400 rupees the limit; with regard to the second, Section 22 of Regulation 20 of 1810, and 200 rupees the limit; and I request to be informed, whether I am right, as I shall put a stop to filing of suits, except the parties conform to Section 24, Regulation 20 of 1810. The Sudder court informed the Judge that he was right in his construction.—*Con.* 498, 2d March 1829, par 3.

European British subjects registered as attached to bazars and residing in cantonments, British soldiers, officers, &c. are amenable to the military court of requests for sums not exceeding 400 rs. European foreigners, Natives, soldiers, natives registered & residing in cantonments, subject to military court of requests in suits not exceeding 200 rs. and to the civil courts in those exceeding that sum.

446. A. and B. have dealings within a Military cantonment. but are not residents therein. A sues B. in the Military Court of requests and obtains a decree. B. demurring to the jurisdiction, the award is enforced, and B. sues in the Civil court for the recovery of the sum paid under the award. Held that a suit of the nature mentioned cannot legally be entertained by a Civil court.—*Con.* 1291, *West. C.* 13th Feb., *Cd. C.* 19th March 1841.

A civil court is not competent to entertain an action to contest the award of a military court of requests.

## SECTION XXXVIII.

### *Jurisdiction of the Civil Courts in reference to the Supreme Court, Calcutta.*

447. Held, that a Zillah court was incompetent to pronounce any opinion on the power of the Supreme court; and that by Section 16, Regulation 3 of 1793, it had no jurisdiction in a claim for money proved to have been paid into the Supreme court by order of the Supreme court.—*S. D. A. Sel. Rep.* 18th Jan. 1844, vol. 7, p. 150.

Civil court cannot pronounce an opinion on the power of the Sup. C., or examine a claim for money paid into it.

448. The Company's courts have no power to interpret the meaning or interfere with the execution of any decree passed by the Supreme court.—*S. D. A. Sel. Rep.* 26th Sept. 1844, vol. 7, p. 183.

Civil court cannot interpret the meaning of a decree of the Sup. C., or interfere with its execution.

449. Although the country courts cannot directly question a judgment of the Supreme court, yet they can, upon collateral grounds not before brought forward, control the parties who may have obtained the judgment.—*S. D. A. Sel. Rep.* 6th Aug. 1844, vol. 2, p. 120.

But the civil courts can, upon collateral grounds not brought forward before, control those who have obtained a judgment at the Sup. C.

450. The Sudder dewanny adawlut will uphold a decree of the Supreme court, in favour of a mortgage founded on a bond to confess judgment; although the foreclosure of the mortgage may be contrary to Regulation 17, 1816, the mortgager having voluntarily subjected himself to the jurisdiction.—*Opinion of the Advocate General in this case*—"I am of opinion that the proper remedy as to obtaining possession of the estate mortgaged by Zameeroodeen Moonshee, is by a suit in the Mofussil court by the mortgagee [quere add, against the mortgager?] who cannot have any defence, the equity of redemption having been foreclosed in the Supreme court. Zameeroodeen not being subject to the jurisdiction of the Supreme court, an ejectment cannot be

The S. D. A. will uphold a decree of the Sup. C. in favour of a mortgagee, on a bond to confess judgment, though the foreclosure be contrary to reg. 17, 1816.

brought against him for the possession in that court, which obliges the mortgagee to resort to the mofussil court."—*S. D. A. Sel. Rep. 19th Sept. 1821, vol. 3, p. 141-112.*

Submission by covenant to the Sup. C. does not bar the jurisdiction of the Co's courts

451. Submission by covenant to the jurisdiction of the Supreme court does not bar the jurisdiction of the courts in the interior.—*S. D. A. Sel. Rep. 5th March 1833, vol. 5, p. 271.*

In an action for property purchased at a sheriff's sale in execution of a judgment of the Sup. C., the Co's court cannot make enquiries which affect the justice of the judgment of the Sup. C., or an execution under it.

452. In an action for possession of property purchased at a sale made by the Sheriff of Calcutta, in execution of a judgment of the Supreme court, it is not competent to the Company's courts to enter into circumstances which go to affect the justice of the judgment given by the Supreme court or of the execution under it—*S. D. A. Sel. Rep. 23d Sept. 1837, vol. 6, p. 187.\**

Idem

453. In an action for possession of property purchased at a sale made by the Sheriff of Calcutta, in execution of a judgment of the Supreme court, it is not competent to the Company's courts to enter into any enquiry as to the merits of the decree of the Supreme court, or of the proceedings in execution under it—*S. D. A. Sel. Rep. 15th Jan. 1842, vol. 7, p. 70*

\* As this is a matter of importance, the communication of the Advocate General Mr. Robert Fyfe Smith to 1807, to Government, and of Government to the zillah authorities is given below

*From the Government of Bengal in the Judicial Department to the Judges and Magistrate of Hooghly, dated 26th February, 1807.*

Sir, I am directed by the Honorable the Governor General in Council to transmit to you, for your information, copy of a letter from the Advocate General relative to the assistance hitherto afforded by the officers of Government in putting the purchasers at the Sheriff's sale in possession of the lands bought by them.

On consideration of the law of the case, as stated in Mr. Smith's letter, the Governor General in Council has been pleased to direct, that no further assistance be afforded to purchasers at the Sheriff's sales, by the officers of Government, at least that such persons be left to obtain possession through the channel of the Courts of law.

(Signed) G. DOWN SWELL, Secretary to Govt.

*From the Advocate General to the Secretary to Government at Bengal in the Judicial Department dated 20th February, 1807.*

Sir, I have the honor to acknowledge the receipt of your letter under date the 5th inst., transmitting for my opinion, by direction of the Honorable the Governor General in Council, copy of a petition from Prasen Kishen Biswas, together with copy of a former petition from Rapsone Dhol and others, in which were requested the officers of Government to the Collector to postpone putting Prasen Kishen Biswas into possession of the lands sold to him by the Sheriff.

2. I respect you to report to the Honorable the Governor in Council that I am of opinion the order for putting Prasen Kishen Biswas into possession was properly committted. It appears that the land was bought by him at a sale of the Sheriff under a judgment obtained at law. It is no part of a Sheriff's duty, nor has he any authority to put purchasers of immovable property at such sales into possession, and he would be a trespasser, if he entered upon the property sold for the purpose of so doing. He sells a title and a title only, under which the purchaser must claim possession in the proper form.

3. I see no reason why Government should be aiming to put the purchaser in a better situation than when the land sold is situated in Calcutta, or why it should interfere in any way to give him a remedy beyond the law. I believe that it has been the practice to put purchasers at the Sheriff's sale in possession under an order of the Board of Revenue, but I imagine that this practice must have originated in a misapprehension of the powers of the Supreme court and of the nature of its process; and it appears to me that its continuance may be productive of inconvenience and that it all over it has no foundation in any right of the parties, and is contrary to the spirit of those rules which Government has prescribed to itself respecting interference in matters of private property.

4. It is true that where no claim of a third person is brought forward it does not appear that any great injustice could be done by giving this assistance to the purchaser, but if his title is clear enough to afford ground for a satisfactory interference, he can find very little difficulty in making it good in a court of justice, which is the proper place for asserting all rights to property, as well because it is fitter than any other for the discussion of any questions which may arise, as that it may by the course of its ordinary policy the best means of providing that due warning shall be given to all parties who may by possibility be concerned in the consequences of its decisions, and that no advantage shall be obtained upon ex parte applications.

5. I take it for granted it will be understood by the Judges of the Provincial courts that in suits brought for possession by persons claiming under the Sheriff's sale, they are not called upon to enter into circumstances, legal or equitable, which go to affect the justice of the judgment given by the Supreme court or of the execution under it, every question of that sort is for the cognizance of the Supreme court only, and the matter to be tried by the Judge of whom possession is sought is whether (supposing the execution to be right, and to have transferred the whole title of the person against whom the judgment was given to the purchaser,) there is any reason why he should not obtain possession.

6. I therefore submit it as my opinion that in no case should the powers of Government be interposed to put purchaser of land at Sheriff's sale under an execution at law into possession, but that the parties should be referred to the ordinary courts of justice. Cases may arise of alienation of immovable property by decrees of the Supreme court in which the act of the court tends to give possession, and in which consequently it is the duty of its ministerial officers to do so. Those cases will deserve consideration when they arise, they are of very rare occurrence and very different from the common case of an execution in which a title only is sold.

(Signed) R. SMITH, Advocate General

454. The plaintiff, a guardian of certain minors, having demised subsequently to the decision of the Zillah court, given in his favor in an action brought by him involving a claim on the part of the minors to a legacy under a will and no successor having been appointed by the mofussil court, and proceedings in regard to the will having been instituted in the Supreme court, the Sudder dewanny adawlut set aside the decree of the Zillah court, leaving the claim preferred to the decision of the Supreme court.—*S. D. A. Sel. Rep. 6th June 1810, vol. 6, p. 289.*

Where proceedings in regard to a will have been instituted in the Sup. C. the S. D. A. ordered that the claim preferred should be left to its decision.

455. An action in the Supreme court on a joint bond or promissory note against one of the contractors, who alone was subject to the jurisdiction of that court, does not bar an action against the other co-contractor, in the mofussil courts.—*S. D. A. Sel. Rep. 8th April 1841, vol. 1, p. 25.*

An action in the Sup. C. against two contractors does not bar an action against another co-contractor in the mof. courts.

456. Held that a suit in the Zillah court, while an action by the same plaintiff against the same party for the same property was pending in the Supreme court, was barred, under the spirit of Section 12, Regulation 3, 1793.—*S. D. A. Sel. Rep. 31st March 1842, vol. 7, p. 79.*

No suit can be heard in the Z. courts while an action by the same plaintiff, against the same party, for the same property, is pending in the Sup. C.

457. An attachment of lands by the Supreme court, pleaded by the purchaser at the Sheriff's sale against the validity of a mortgage and conditional sale of part of the lands during the attachment, was disallowed, on proof that the Sheriff's sale took place in satisfaction of a different demand and in execution of a different judgment than that under which the original seizure was made; not shewn also that any legal attachment by the Supreme court existed at the time of the mortgage on which a judgment had been obtained in the Zillah court before the Sheriff's sale.—*S. D. A. Sel. Rep. 3d Oct. 1806, vol. 1, p. 167.*

Grounds on which the plea of an attachment of lands by the Sup. C. to annul a Sheriff's sale against a mortgage and conditional sale of part of the lands during the attachment was disallowed.

458. But the private sale of a dependant talook, made by the zemindar while his zemindary was under attachment by the Supreme court, which ended in the public sale of it, declared invalid against the purchaser at the public sale, though obligatory on the zemindar or his successor in the event of the public sale being set aside.—*S. D. A. Sel. Rep. 22d Dec. 1806, vol. 1, p. 172. Also Sel. Rep. 3d July 1807, vol. 1, p. 195.*

The private sale of a dependant talook by the zemindar, while his zemindary was under attachment by the Sup. C. which ended in the public sale, invalid against the purchaser at the public sale, though obligatory on the zemindar.

459. Part of a debt having been realized by the process of the Supreme court, and the action there having been discontinued, it is still competent to the claimant to sue for the remainder in a Provincial court, though the claim to be reimbursed for costs of suit incurred in the former court will be rejected.—*S. D. A. Sel. Rep. 16th Jan. 1821, vol. 3, p. 66.*

Part of a debt realized by the process of the Sup. C. and the action there discontinued, the claimant may sue for the remainder in the Prov. court, but not for the costs.

## SECTION XXXIX.

### *Suits cognizable and not cognizable by Munsiffs.*

460. Persons invested with the powers of Munsiffs are hereby empowered to receive, try, and determine all suits of the following descriptions, provided the landed or other real property to which the suit may relate shall be situated, or provided, in all other cases, the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall reside as a fixed inhabitant, within the limits to which their respective jurisdictions may extend.—*Reg. 5. 1831, Sect. 5, Cl. 1.*

Definition of suits cognizable by M.



Suits for personal property, to the value of 300 rupees, cognizable by Moonsiffs.

461. For money or other personal property not exceeding in amount or value the sum of three hundred rupees, provided the claim include the whole amount of the demand arising from the cause of action, and be not for damages on account of alleged personal injuries, or for personal damages of whatever nature.—*Ibid.* Cl. 2.

Suits for real property, to the value of 300 rupees, cognizable by Moonsiffs.

462. For the property or possession of land or other real property, with the exception of land held exempt from the payment of revenue, the computed value of which shall not exceed three hundred rupees.—*Ibid.* Cl. 3.

Repeals Cl. 2, sect. 14, reg. 24, 1831 and Cl. 4, sect. 5, reg. 5, 1831.

463. It is hereby enacted, that Clause 2, Section 13, Regulation 23, 1811, and Clause 4, Section 5, Regulation 5, 1831, be repealed.—*Act VI. 1843, Sect. 6.*

No person by reason of place of birth or of descent shall in any civil proceeding be exempted from the jurisdiction of the courts of the Moonsiffs in the territories subject to the Presidency of Fort Willing in Bengal.—*Ibid.* Sect. 7.

464. And it is hereby enacted, that no person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever exempted from the jurisdiction of the courts of the Moonsiffs in the territories subject to the Presidency of Fort Willing in Bengal.—*Ibid.* Sect. 7.

Persons vested with the power of Moonsiffs may receive, try, and determine suits of every description under the restrictions as to local jurisdiction and value of property mentioned in Clauses 1, 2 and 3, Section 5, Regulation 5, 1831. But no Moonsiff shall be a party to any suit, or any of his relatives or dependants, or any of the vakeels or officers of his court shall be a party.—*Ibid.* Sect. 8.

465. And it is hereby enacted, that persons invested with the powers of Moonsiff shall be competent to receive, try, and determine suits of every description under the restrictions as to local jurisdiction and value of property mentioned in Clauses 1, 2 and 3, Section 5, Regulation 5, 1831. Provided, however, that no Moonsiff shall try any suit in which he himself, or any of his relatives or dependants, or any of the vakeels or officers of his court shall be a party.—*Ibid.* Sect. 8.

Suits which may be tried by reason of the fact that the defendant is a party to the suit, or any of his relatives or dependants, or any of the vakeels or officers of his court shall be a party.—*Ibid.* Sect. 9.

466. And it is hereby enacted, that in cases where, by reason of the above section, a Moonsiff cannot try a suit because he himself, or any of his relatives, or dependants, or any of the vakeels or officers of his court is a party to the suit, it shall nevertheless be competent to the Moonsiff to receive the suit, and forward it to the Judge of the zillah to which he is subordinate, who may thereupon refer the same for trial and decision to any other Moonsiff of the district.—*Ibid.* Sect. 9.

Suits for personal damages, or the proprietary right in, and possession of, lands held exempt from the payment of revenue, cognizable by Moonsiffs, but not for the revenue of such lands under sect. 26, reg. 2, 1831.

467. It is deemed advisable by the Sudder dewanny adawlut for the Lower provinces to promulgate for general information and observance, the result of a correspondence which has recently passed with the Sudder dewanny adawlut in the North-Western provinces, regarding the local competency of Moonsiffs to receive and determine suits for the property and possession of lands held exempt from the payment of revenue, doubts on that subject having been engendered by the omission of the Legislature to re-enact Clauses 2 and 3, Section 5, Regulation 5 of 1831, and to re-enact, in the body of Act VI. of 1843, such portions thereof as it was intended to place within the competency of Moonsiffs.—*Cir. Ord. 8th Oct. 1844, par. 1.*

11.

468. It has been ruled, with the concurrence of the Sudder dewanny adawlut for the Western provinces, that, under the terms of Section 8, Act VI. of 1843, suits "for damages on account of alleged personal injuries, or for personal damages of whatever kind, and claims to the proprietary right in, and possession of, lands held exempt from the payment of revenue," are legally cognizable and determinable by Moonsiffs, provided that the "restrictions as to local jurisdiction and value of property, mentioned in Clauses 1, 2 and 3, Section 5, Regulation 5 of 1831" be not transgressed.—*Ibid.* par. 2.

469. The Court desire me to add, that the arguments advanced in Circular order, Sudder dewanny adawlut, No. 95, dated 30th August, 1833, for excluding from the jurisdiction of Moonsiffs, claims preferred to the *revenue* of *lakhiraj* land, under the provisions of Section 30, Regulation 2 of 1819, remain unaffected by Act VI. of 1843, and that suits of that nature must be considered, as hitherto, beyond the competency of a Moonsiff to determine.—*Ibid*, *par.* 3.

Idem.

470. A *ryot* cannot remove his suit from the Moonsiff's court, by merely affirming that the land for which the rent is demanded is not liable to rent. The point at issue is, not the validity of the alleged rent-free tenure, but the fact of the *ryots* having paid, or not paid rent for the preceding year. If this fact be proved by the village accounts, or other legal evidence, the Moonsiff will pass a decree for such amount as may appear due, leaving the *ryot* to establish his right to hold the land as *lakhiraj*, by a suit under Section 30, Regulation 2, 1819.—*Con.* 696, *Cal. C.* 25th May, *West. C.* 6th July 1832.

The mere affirmation that the land for which rent is demanded is not liable to rent does not enable a *ryot* to remove his suit from the court of the M.

471. And it is hereby enacted, that within the said territories no person whatever, male, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever connected with arrears or exactions of rent excepted from the jurisdiction of the courts of the Moonsiffs.—*Act III.* 1839, *Sect.* 3.

No person by reason of place of birth or descent, to be exempt from jurisdiction of revenue courts or Moonsiffs.

472. In those districts in which Moonsiffs may be appointed under the provisions of Regulation 5, 1831, those Moonsiffs shall be competent, in addition to the authority now possessed by Moonsiffs, generally, of receiving, trying, and deciding claims to arrears of rent preferred by regular suit, in like manner to dispose of all claims preferred by under-tenants or others, who may be desirous of resisting the distrant of their property or the attachment of their persons: or who may prefer a claim for damages on account of such acts.—The rule contained in Section 13, Regulation 23, 1814, or any other Regulation, prohibiting the award of damages by Moonsiffs, shall not be considered applicable to such claims.—*Reg.* 8, 1831, *Sect.* 11.

Moonsiffs appointed under reg. 5, 1831 declared competent to award damages in cases of illegal distrant or attachment.

Rules prohibiting award of damages by M. declared inapplicable to such claims.

473. Held, by the Sudder court that an *undefended* suit for an instalment below 300 rupees, on a bond for an aggregate sum above that amount, is cognizable by the Moonsiff. The same principle is applicable to an *undefended* action for an arrear of rent below 300 rupees due on a farming engagement or lease of higher value.—*Cir. Ord. Cal. C.* 16th July, *West. C.* 13th Aug. 1841.

An undefended suit for an instalment below 300 rs. on a bond above that amount cognizable by Moonsiff, also an undefended suit for an arrear of rent below that on a farming engagement exceeding it.

474. The Sudder dewanny adawlut have had before them your letter, [that of the Judge of the Jungle Mohals] under date the 9th instant, on a question as to the jurisdiction of a Moonsiff in a suit for an instalment, the amount of which is within his competence, but which originates in a bond of which the amount is beyond his competence.—*Cir. Ord. Cal. and West. C.* 31st Aug. 1832.

Idem.

475. It appears to the Sudder dewanny adawlut, that the jurisdiction of the Moonsiff in the suit for the instalment depends much on the defence set up.—*Ibid*.

Idem.

476. Should the original bond be brought into question, and its validity need to be determined, the Moonsiff cannot have jurisdiction, unless the sum, which forms the subject of suit, together with the sum of all instalments, subsequently claimable under the bond, be within

Moonsiff's jurisdiction on the above subject.

the legal competence of a Moonsiff. If the suit be instituted to recover the *balance* of principal with interest, due on a bond, for more than 300 rupees, and the amount claimed be within the competence of a Moonsiff, the Moonsiff will have jurisdiction, and plaint will be engrossed on a stamp of value sufficient to cover the *claim*; if the suit be instituted for the recovery of an instalment, with or without interest, and the sum thereof, together with the sum of all other instalments, subsequently claimable under the bond, be within the competence of a Moonsiff, the Moonsiff will have jurisdiction and the plaint will be engrossed on a stamp equal to the aggregate amount of the instalment and interest claimed, and of the sum of all instalments subsequently due — *Con. Ord. 14th May 1817.*

477. If the defence should merely be, that the instalment sued for has been paid, and the mere question is, whether such is the fact or not, the Moonsiff might be competent to decide the case — *Con. Ord. Cal. and West. C. 31st Aug. 1832.*

Moonsiffs cannot arrest defaulters of the suit of zemindars

478 Moonsiffs are prohibited from receiving and acting upon petitions for the arrest of defaulters presented by zemindars. — *Con. Ord. Cal. and West. C. 13th July 1832.*

Moonsiff competent to arbitration

479 Held that under the provisions of Section 2, Regulation 16, 1793, Moonsiffs are competent, with consent of parties, to refer suits to arbitration — *Con. 1320, Cal. C. 11th Feb. West. C. 14th March 1812.*

Moonsiff competent to decide upon cognizance of attachment & sale of personal property

480 In reply to letters from the Judge of zillah Allahabad, dated the 2d and 5th May, 1812, submitting the following question. — Whether a Native Commissioner in his capacity of Moonsiff, was competent to receive and decide upon claims (within the prescribed limitation and instituted before him in the first instance) for the recovery of the amount of an unjust attachment and sale of personal property — he was informed on the 1st May, 1812, that the Native Commissioners were authorized, by Section 30, Regulation 28, 1803, to take cognizance of the description of suits noticed by him. — *Con. 103, 21st May 1812.*

Summary suits for rent not cognizable by Moonsiff

481. I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of a letter from you, dated the 5th instant, requesting the Court's construction of Section 13, Reg. 23, 1811. The Court, understanding your query to be "whether, under the above section, Moonsiffs are empowered to receive and try summary suits instituted for the recovery of arrears of rent, provided such arrears do not exceed 61 rupees," direct me in reply to acquaint you, that they do not consider summary suits for rent to be cognizable by Moonsiffs. — *Con. 332, 22d Dec. 1820.*

Suits connected with arrears or exaction of rent may be received by Moonsiffs on quarter suits, whether instituted by ryots or under-tenants resisting

482. I am directed to inform you, that the cases therein alluded to, if connected with arrears or exaction of rent, are cognizable as summary suits by the Collector under the provisions of Regulation 5, 1831, and (except where summarily tried by the Collector,) as regular suits by the Moonsiffs on stamp paper of a quarter the full value, if within the amount cognizable by those officers under Sections 8 and 11 of that Regulation. — In reply to your third question the Court direct me to state that they consider the above rules applicable both to ryots and under-tenants resisting undue demands, and to zemindars and others claiming their just dues, — *Con. 714, Cal. C. 31st Aug., West. C. 5th Oct. 1832.*

A Moonsiff may try three several suits between the same parties for the sum of 150 Rs.

483. The Court of Sudder dewanny adawlut have had before them your letter, dated the 15th ultimo, requesting the Court's instructions as to the competency of a Moonsiff to try and determine three several suits between the same parties, the case being the sum of 150 Rs., for each of which sum 150 Rs. were given on the same day. — In reply, I am desirous to acquaint y

that there does not appear to be any rule in Regulation 23 of 1814 or other enactment, which can be held to prohibit the cognizance of such suits by a Moonsiff.—*Con. 481, 2nd May 1828.*

481. I am directed to inform you, that suits brought by khoddkhaast ryots for damages sustained in consequence of ejectment and claims for damages arising from being deprived of water for the purpose of irrigation, cannot be considered as coming within the prohibition contained in Clause 2, Section 5, Regulation 5, 1831, which applies only to suits for damages of a personal nature and not to those for damage done to property. Such suits are therefore cognizable by Moonsiffs. With regard however to the first description of suits, I am directed to refer you to the Circular order of the 15th November, 1833, which declares such claims cognizable by the Collector under Regulation 8, 1831.—*Cal. C. 5th Dec. Cal. C. 26th Dec. 1834.*  
[Moonsiffs may now take cognizance of suits for personal damages, see Section 8, Act VI. 1843.]

A suit by a khoddkhaast ryot, for the recovery of damages from not having been allowed to cultivate his land, or for loss sustained by being deprived of water to irrigate his field, is cognizable by Moonsiffs, such damages not being considered of a personal nature.

485. The Court, understanding your question to be whether a Collector can, without application to the Judge, issue a perwannah to a Moonsiff to sell personal property and houses attached by his Nazih, for arrears of public revenue direct me to communicate their opinion that he is not competent to do so.—*Con. 918, Cal. C. 28th Nov., West. C. 26th Dec. 1834.*

A collector cannot, without application to the Judge, issue a perwannah to a Moonsiff to sell property attached for arrears of public revenue.

486. The Court of Sadder dewanny adawlut have had before them your letter, dated the 5th instant, requesting to be informed whether Clause 1, Section 15, Regulation 23, 1814, is intended to bar the cognizance of a suit by a Moonsiff, if the defendant be not a resident or inhabitant of his jurisdiction.—In reply, I am directed to communicate to you the opinion of the Court, that a Moonsiff is not competent to take cognizance of a suit for money or other personal property in which the defendant is not resident within his jurisdiction.—*Con. 452, 15th June 1827.*

A Moonsiff cannot take cognizance of a suit for money or personal property, if the defendant is not resident in his jurisdiction.

487. In this case the Moonsiff's order was reversed by the Judge of Allyghur on the ground of the defendant being an inhabitant of the ilaca of Her Highness the Begum Sumroo out of the jurisdiction of Rubhoopoor; but it appears that the defendant, having real property in the jurisdiction of the Moonsiff's court of Rubhoopoor, is amenable to it. The sanction of the Court is therefore requested to the reversal of the order passed by the Judge of Allyghur, in order that the case may be re-heard in the Civil court of Meerut, to which the pergunnahs of Rubhoopoor have been transferred.—I am directed by the Court to acknowledge the receipt of your letter of the 4th instant, with its enclosures. In reply, I am directed to inform you that the circumstances mentioned by you do not form a sufficient ground for review of the former Judge's order. It appears from your letter, that the defendant had real property in the jurisdiction of the Moonsiff; this would no doubt render him amenable to it in cases connected with that property; such however is not stated to be the case in the suit to which your communication refers, in which it appears that the parties are both inhabitants of a foreign territory, and that the cause of action also arose in a foreign territory, the case therefore does not come within the limits of jurisdiction laid down in Section 5, Regulation 2, 1803.—*Con. 956, West. C. 12th June. Cal. C. 10th July 1835.*

The defendant is not a resident within the Moonsiff's jurisdiction, but has real property there, this would render him amenable to the Moonsiff's court in cases connected with that property, but not in a suit in which both he and the plaintiff are inhabitants of a foreign territory, the cause of action having arisen in a foreign territory.

488. For the consideration and orders of your Court I submit copy of a petition presented by Ramtonoo Pal, and beg to be informed whether with reference to the Regulations noted

in the margin, a Moonsiff is empowered to try so important a case as that alluded to by the petitioner. Ramtonoo states

Reg. 5, 1831, sect. 5, cl. 3.  
Reg. 13, 1829, sect. 17, sch. B. no. 8  
that hitherto he has never paid more than 32 rupees per annum, whereas you will observe, the zemindar, Roy Gungadhur, claims 206 rupees 12 annas, in other words he demands sup-

A petition in a suit brought by a holder of a zamindari against another holder of a zamindari, the latter is a resident in the territory.

posing the petitioner's account to be true) an increased yearly income of rupees 175 in perpetuity equivalent to a principal sum of rupees 1,500, or 2,000, calculating at the rates of interest current in Bengal. My own opinion is that suits of this value should be referred for trial to the Principal Sudder Ameer — I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, and in reply to inform you that the suit alluded to by you, being for a sum of money not exceeding 300 rupees, is cognizable by the Moonsiff under Clause 2, Section 5 Regulation 5, 1831 — *Con. 841, 2d Aug. 1833.*

## SECTION XL.

*Suits cognizable by Sudder Ameer.*

Suits of classes  
what amount, and of  
which nature cogniz-  
able by S. A.

189. The zillah and city Judges are hereby declared competent to refer to any of the Sudder Ameer subject to their authority for trial and decision any original suits depending or instituted in their courts for money or other personal property, or for the property or possession of land, or of other real property, the amount or value of which calculated according to the rules specified in No. 8, of the Schedule B, referred to in Section 17, Regulation 10, 1829, may not exceed one thousand rupees. Provided however, that no suit shall be referred for trial to a Sudder Ameer in which he himself or his relatives, or dependants, or the vakeels or officers of his court shall be a party, or in which an European British subject, an European foreigner, or an American shall be a party. — *Reg. 5, 1831, Sect. 15, Cl. 2.*

Affairs within the  
competence of P. S.  
A. or S. A. to decide,  
shall ordinarily be re-  
ferred to the court,  
of those officers.

190. It is hereby enacted, that within the territories subject to the Presidencies of Fort William in Bengal, Fort St. George and Bombay, all suits within the competency of a Principal Sudder Ameer or Sudder Ameer to decide, shall ordinarily be instituted in the courts of those officers respectively. — *Act IX. 1844, Sect. 1.*

Zillah or city judge  
may withdraw them  
himself or refer them  
to any other compe-  
tent court subordi-  
nate to him.

191. Provided nevertheless, and it is hereby enacted, that it shall be competent to a zillah or city Judge to withdraw such suit from the court in which they may have been instituted, and to try them himself, or to refer them for trial to any other court subordinate to his authority, and competent in respect to the value of the suit, whenever he may see sufficient reason for so doing. — *Ibid, Sect. 2.*

Zillah or city judge  
not assigned to the P.  
S. or S. A. attached  
to the court, if more  
than one of them, &c.  
the several Moonsiff  
divisions which shall  
constitute their respec-  
tive special juris-  
diction, and such P.  
S. A. to have cogniz-  
ance of all suits men-  
tioned in sect. 1 of  
this Act.

192. And it is hereby enacted, that whenever there shall be more than one Principal Sudder Ameer or more than one Sudder Ameer attached to the court of any zillah or city Judge, and not having any special local jurisdiction, it shall be the duty of such Judge to appoint from time to time the several Moonsiffs' divisions which shall constitute the special local jurisdiction of each of such Principal Sudder Ameer and Sudder Ameer, and that each of such Principal Sudder Ameer and Sudder Ameer shall be empowered to take cognizance of all such suits as are mentioned in Section 1 of this Act, provided the landed or other real property to which the suit may relate shall be situated, or in all other cases the cause of action shall have arisen, or the defendant at the time when the suit may be commenced shall reside as a fixed inhabitant within the limits of such local jurisdiction as aforesaid. — *Ibid, Sect. 3.*

493. And it is hereby enacted, that from the first day of June, 1836, and within the territories of the East India Company, no person whatever shall, by reason of descent, be in any civil proceeding whatever, excepted from the jurisdiction of the courts of the Sudder Ameens, in the territories subject to the Presidency of Fort William in Bengal.—*Act XI. 1836, Sect. 2.*

No person by reason of descent shall be exempt from the jurisdiction of the courts enumerated.

494. Whenever the zillah and city Judges shall retain, on their own files, any original suits which they are authorized by this Regulation to refer to a Sudder Ameen, or Principal Sudder Ameen, they shall record their reasons for doing so upon their proceedings.—*Reg. 5, 1831, Sect. 24.*

Judges retaining on their own files cases referable to the S. A. or P. S. A., to record their reasons

495. You will immediately transfer from your own file to the files of the Principal Sudder Ameens and Sudder Ameens all suits in which the Government or its officers may be a party, accordingly as the suits may be cognizable by those courts respectively. You are of course competent to retain any of these suits on your own file, provided you see sufficient grounds for so doing, but in reporting to the Court (which you are hereby required to do on the transmission of the monthly statements first sent after the receipt of these instructions,) the execution of their orders, you will submit a list of the suits that you have so retained, and you will briefly explain your reasons for so doing. In like manner you will briefly explain in your monthly statement No. 1, the nature of all original suits retained on your own file, and the cause of their retention.—*Cir. Ord. Cal and West. C. 23rd Feb. 1833*

The judges ordered to transfer to the S. A. all suits in which govt. or its officers may be a part, if the suits be cognizable by them

496. Held that under the provisions of Section 2, Regulation 16, 1793, Sudder Ameens are competent, with consent of parties, to refer suits to arbitration.—*Con. 1320, 11th Feb. 1842.*

S. A. may refer to arbitration

## SECTION XII.

### *Suits cognizable by Principal Sudder Ameens*

497. The zillah and city Judges are authorized to refer to the Principal Sudder Ameens any original suits depending or instituted in their courts for money or other personal property, or for the property or possession of land or other real property, the amount or value of which, calculated according to the rules specified in No. 8, of the Schedule B., referred to in Section 17, Regulation 10, 1829, may not exceed five thousand rupees. Provided that no suit be referred to a Principal Sudder Ameen in which he, or his relatives, or dependants, or the vakeels or officers of his court shall be a party, or in which an European British subject, or an European foreigner, or an American shall be a party.—*Reg. 5, 1831, Sect. 18, Cl. 1.*

Suits for claims of what amount and of what nature cognizable by P. S. A.

498. The rules enacted in the 1st, 2d and 3d Sections of Act IX. 1844, and given above 490, 491, 492, are applicable also to Principal Sudder Ameens.

499. And it is hereby enacted, that from the first day of June, 1836, and within the territories of the East India Company, no person whatever shall, by reason of descent, be in any civil proceeding whatever, excepted from the jurisdiction of the courts of the Principal Sudder Ameens, in the territories subject to the Presidency of Fort William in Bengal.—*Act XI. 1836, Sect. 2.*

No person, by reason of descent shall be exempt from the jurisdiction of the courts enumerated.

Repeals so much of cl. 1, sec. 18, reg. 5 of 1831, as provides that no suit be referred to a P. S. A. in which the vakeels or officers of his court shall be a party.

Suits in which the relatives or dependants of a S. A. are a party, and which the zillah and city judges cannot refer, may be transferred to another zillah or city court, and by such court be referred in the same manner as if it had been originally instituted in the court of such zillah or city.

Suits of any value may be referred by a zillah or city judge to any P. S. A.

S. D. A. may authorize the judge of any zillah or city court to transfer to a P. S. A. any civil proceeding, and all proceedings so transferred shall be disposed of by the P. S. A. according to the rules prescribed for zillah or city judges; provided that an appeal from the P. S. A. shall lie to the zillah or city judge in the first instance and specially to the S. D. A.

P. S. A. may refer suits to arbitration

Suits of which the documentary evidence is in English not to be referred to a P. S. A. ignorant of it.

The above order is qualified, as below

500. It is hereby enacted, that so much of Clause 1, Section 18, Regulation 5 of 1831, of the Bengal Code, as provides that no suit be referred to a Principal Sudder Ameen in which the vakeels or officers of his court shall be a party, is hereby repealed.—*Act XXVII. 1838. Sect. 1.*

501. And it is hereby enacted, that in cases where, by reason of the above clause, a suit cannot be referred to a Sudder Ameen, because he himself or his relatives or dependants are a party to the suit, and where the zillah and city Judges cannot refer such suit to be tried by any other competent authority, it shall be lawful for each of the Courts of Sudder dewanny adawlut within the territories subject to the Presidency of Fort William in Bengal to direct, by an order authenticated by the official signature of their Register, that the cognizance of such suit shall be transferred to any other Zillah or City court subordinate to the same Court of Sudder dewanny adawlut; and the Judge of such other Zillah or City court may thereupon refer such suit in the same manner as if the same had been originally instituted in the court of such other zillah or city.—*Ibid. Sect. 2.*

502. It is hereby enacted, in modification of Section 18, Regulation 5, 1831, of the Bengal code, that from the first day of November, 1837, no zillah or city Judge within the territories subject to the Presidency of Fort William in Bengal, shall be precluded by reason of the amount of value of the property for the recovery of which a suit is instituted, from referring that suit to any Principal Sudder Ameen.—*Act XXV. 1837, Sect. 1.*

503. And it is hereby enacted, that it shall be competent to either of the Courts of Sudder dewanny adawlut within the territories subject to the Presidency of Fort William in Bengal, by an order under the signature of the Register of such court, to authorize the Judge of any Zillah or City court, subordinate to such Court of Sudder dewanny adawlut, to transfer to a Principal Sudder Ameen any civil proceedings, whether miscellaneous or summary, which may be depending at the time when such order is issued or be thereafter instituted in the court of the said zillah or city Judge, and all proceedings so transferred shall be disposed of by the said Principal Sudder Ameen according to the rules prescribed in the Regulations for the guidance of the zillah and city Judges in the like cases, — provided however that an appeal from the order of the Principal Sudder Ameen in such cases shall lie in the first instance to the zillah or city Judge, and specially to the Sudder Dewanny Adawlut.—*Ibid. Sect. 8.*

Vide 495, *Cir. Ord. Cal. and West. C. 23d Feb. 1838.*

504. Held that under the provisions of Section 2, Regulation 16, 1793, Principal Sudder Ameen are competent, with consent of parties, to refer suits to arbitration.—*Con. 1292, Cal. C. 26th March, West. C. 10th April 1841.*

505. No suits should be referred to the Principal Sudder Ameen in which the documentary evidence may be in the English language, unless such Principal Sudder Ameen is acquainted with the English language.—*Cir. Ord. Cal. and West. C. 23d Feb. 1838, par. 4.*

506. That part of the Circular order No. 4, under date the 23rd February, 1838, which

prohibits the reference to a Principal Sudder Ameen of suits in which the documentary evidence may be in English unless that officer possess an acquaintance with the English language, appearing to the Court to require some qualification, I am directed to communicate to you the following instructions, in modification of paragraph 4 of the Circular referred to, for the guidance of yourself and the subordinate courts concerned.—*Cir. Ord. Cal. C. 18th Oct., West. C. 31st Oct. 1839, par. 1.*

507. You will not in future consider the mere circumstance of the initial petition reciting the existence of an English document in support of a claim, to constitute a necessary ground for the retention of a suit on your own file. On the contrary such suits are to be referred in the first instance, in the same manner as others, under the existing laws, to those tribunals by which they may be cognizable—*Ibid, par. 2.*

Suits in which the initial petition recites the existence of an English document not to be retained on the judge's file, but referred to the courts in which they are cognizable.

\* 508. After the reference of such a suit, when the Principal Sudder Ameen, (or Sudder Ameen with respect to suits which from their amount may be within his cognizance,) shall proceed in the manner prescribed by Sections 10 and 12, Regulation 26 of 1814, it will be his duty, upon either party tendering an English document as evidence, to require such party to file with it an Oordoo translation,\* without which accompaniment it should not be received. The court before whom these papers are filed, shall thereupon transmit both the original and translation, in the same mode as is laid down for the transmission of exhibits, and with the same precautions to your court, for consideration and orders.—*Ibid, par. 3.*

After the suit is referred, if an Eng. document is tendered as evidence, the P. S. A. or S. A. will require an Oordoo translation and transmit the original and translation for the judge's consideration and orders.

509. Upon inspecting the English and Oordoo documents, you will consider the propriety of allowing the subordinate court to proceed with the suit or transferring it to your own file, with due advertence to the nature of the English writing, and of the transaction to which it may relate, exercising your discretion accordingly. Should it appear likely to involve such complicated questions, as would make a knowledge of English indispensable to a correct adjudication of the case, you may deem it advisable to adopt the latter course, and recall the suit to the file of your court; but if the English writing should be confined to a simple account, bill, or other similar document, you will probably think fit, after satisfying yourself of the accuracy of the translation, (and in the event of discovering any error, taking proper steps towards remedying the defect,) to return the papers to the lower court, with instructions to proceed in the usual manner.—*Ibid, par. 4.*

The various circumstances on which will depend the retention of the case on the judge's file, or its being returned for trial to the lower court.

510. The Court are pleased to prescribe the following rules in modification of the Circular order, No. 54, of the 18th of October (Western Provinces, 31st October), 1839.—*Cir. Ord. 18th Feb. 1842, par. 1.*

The above rules further modified, as below.

511. It is to be left to the option of the party filing an English document to accompany it with a translation in the Oordoo or Bengalee language; but the Native Judge, before whom the suit may be pending is competent to call on such party to file a translation when it may seem to him to be wanted—*Ibid, par. 2.*

It is left optional with the party filing an Eng. document to accompany it with a translation. The Judge may call for a translation.

512. No question is to be entertained as to the correctness of any translation, if both par-

If both parties agree to receive the trans-

\* Bengalee in the Bengal districts, and Ooriya in Cuttack.



lation as correct, or if the disputed point be non essential, the translation not to be questioned

N. J. may refer any doubts of the translation to the J

ties agree to receive it as correct, or if the point on which the correctness is doubted, be one not essential to the decision of the case.—*Ibid*, par. 3.

513. The Native Judges are, however, to be at liberty to refer to the Judge any doubt as to the accuracy of a translation, on which they may wish to obtain his instructions.—*Ibid*, par. 4.

## SECTION XLII.

### *Suits cognizable by the Zillah Judges.*

Judges to have primary jurisdiction in all suits in which the value of the claim exceeds 5000 rs

514 From and after the date aforesaid, the Judge of the Zillah of City court into which the provisions of this Regulation may be introduced, shall have primary jurisdiction in all suits, in which the value or amount of the claim may exceed five thousand rupees, anything in the existing Regulations to the contrary notwithstanding.—*Reg. 5, 1831, Sect. 27, Cl. 3. [By preceding enactments, the zillah and city Judges had jurisdiction in cases below 5000 rupees. The enactment above given is not intended to curtail but to enlarge their jurisdiction.]*

Suits under Reg. 4, 1812 will be tried by the zillah and city Judges.

Also suits under Reg. 23, 1814, sec 10 and 67

515. Suits, under Regulation 4 of 1812, instituted or defended by the public officers on behalf of sovereign Native princes, will be received and decided by the zillah and city Judges.—*Govt. Ord. No. 3, 15th Jan. 1834.*

516 Actions against Moonsiffs, Sudder Ameens and Principal Sudder Ameens in reference to Regulation 23, 1814, Sections 10 and 67, for corruption, extortion or any oppressive or unwarranted act of authority, and in which suits the decree will cause the offender to pay damages and costs to the party injured, should be preferred to and tried by the zillah and city Judges, subject to appeal to the Sudder Court.—*Ibid*, No. 7.

Also suits under Reg. 12, 1793, sec 8; Reg. 11, 1795, Reg. 11, 1803, sec 8, and Reg. 3, 1827, sec. 2 and 3

517. Charges, under Regulation 12, 1793, Section 8; Regulation 11, 1795; Regulation 11, 1803, Section 8; Regulation 3, 1827, Sections 2 and 3, of corruption or extortion against the Law Officers of the Zillah and City courts, and in which cases the decree would adjudge the offender to refund the amount, or value of the money or property received or taken, with interest not exceeding 12 per cent. in cases of money taken, and full costs of suit, should be preferred to and tried by the zillah and city Judges, subject to appeal to the Sudder Court.—*Ibid*, No. 8.

Also suits under Reg. 39, 1793, sec 11; Reg. 49, 1795, sec 3, and Reg. 16, 1803, sec 11

518. Suits, under Regulation 39, 1793, Section 11; Regulation 49, 1795, Section 3, and Regulation 46, 1803, Section 11, against Cazees, for undue practices in the discharge of the duties prescribed to them by the Regulations, should be preferred to and tried by the zillah and city Judges, subject to appeal to the Sudder Court.—*Ibid*, No. 9.

Also suits under Reg. 14, 1793, sec 33, and Reg. 27, 1803, sec. 17.

519. Suits, under Regulation 14, 1793, Section 33; Regulation 27, 1803, Section 36, against a Collector for sums of money demanded, directly or indirectly received or taken by him, for his own use, from any proprietor or farmer of land, or any surety, or any purchaser of land; or for any acts done in his official capacity, or repugnant to the Regulations, or not warranted thereby, and that shall not involve any claim to sums received or demanded by him on behalf of Government in conformity to the Regulations, will be tried by the zillah and city Judges.—*Ibid*, No. 17.

## SECTION XLIII.

*Suits cognizable by the Uncovenanted Judges.*

520. In modification of Section 19, Regulation 8, 1831, regular suits instituted to set aside the summary judgments of Collectors for land rent are declared cognizable, according to their amount, by the Principal Sudder Ameens, Sudder Ameens and Moonsiffs. —*Reg. 7, 1832, Sect. 10.*

Regular suits instituted to set aside summary awards of collectors for land rent declared cognizable by P. S. A., S. A. or M.

521. Suits, under Regulation 22, 1793, Sections 22 and 38; Regulation 17, 1795, Section 35; Regulation 14, 1807, Section 11, Clause 12, by the injured party for damages against a darogah of Police, or any officer under his authority, for corruption, extortion, oppression, or any act repugnant to the Police regulations, are to be received by the Principal Sudder Ameens, Sudder Ameens or Moonsiffs, as they may be cognizable by one or other. —*Govt. Ord. No. 14, 15th Jan. 1834.*

The following suits will be received and tried by the unconv. judges; those under reg. 22, 1793, sec. 22 and 38, reg. 17, 1795, sec. 35, and reg. 14, 1807, sec. 11, cl. 12.

The following suits (Rules 522 to 526) will be received and decided by the Uncovenanted Judges with the exception of cases in which a European officer of Government may be concerned.

Also the following, except when an European officer of govt. is concerned.

522. Suits, under Regulation 10, 1793, Section 36; Regulation 52, 1803, Section 40 by a proprietor against a collector, guardian or manager for acts done contrary to the regulations or orders of the Court of Wards, or for any breach of trust during the continuance of an estate under the Court of Wards. —*Govt. Ord. No. 18, 15th Jan. 1834.*

Suits under reg. 10, 1793, sec. 36, and reg. 52, 1803, sec. 40.

523. Suits, under Regulation 14, 1793, Sections 6 and 24; Regulation 45, 1793, Sections 7 and 8; Regulation 20, 1795, Sections 7 and 8; Regulation 26, 1803, Sections 21 and 22; Regulation 27, 1803, Section 30, Clause 23, by proprietors, farmers and their sureties against ameens and tehseeldars deputed by the Collector to take charge of their lands in cases of arrears of revenue, or execution of decrees, for embezzlement or injuries done by them to the estate or farm. —*Ibid, No. 19.*

Suits under reg. 14, 1793, sec. 6 and 24; reg. 45, 1793, sec. 7 and 8; reg. 20, 1795, sec. 7 and 8; reg. 26, 1803, sec. 21 and 22, and reg. 27, 1803, sec. 30, cl. 23.

524. Suits, under Regulation 21, 1814, Section 13, Clause 2, against a Collector's ameen partitioning an estate, for corruption. —*Ibid, No. 20.*

Suits under reg. 21, 1814, sec. 13, cl. 2.

525. Suits, under Regulation 6, 1795, Section 7; Regulation 27, 1803, Section 7, against a Collector's peons or sowars for exactions of money or subsistence, or receipt thereof from defaulters, involving the penalty of a refund of double the amount. —*Ibid, No. 21.*

Suits under reg. 6, 1795, sec. 7, and reg. 27, 1803, sec. 7.

526. Suits, under Regulation 2, 1800, Section 9, against the officers stationed at the Chunar, Ghazepore and Mirzapore stone quarry, or any other persons, for exactions beyond the prescribed duty, and charges of corruption against any public officer or other person, directly or indirectly entrusted with the execution of any part of this regulation; the penalties for extortion and corruption being the same as against ministerial Native officers under Regulation 13, 1793. —*Ibid, No. 22.*

Suits under reg. 2, 1800, sec. 9.

527. Sudder Ameens and Moonsiffs are not prohibited from trying suits in which other Sudder Ameens and Moonsiffs, or their dependants may be concerned. —*Con. 692, 18th May 1832.*

S. A. and M. may try suits in which other S. A. and M. or their dependants are concerned.

## SECTION XLIV.

*Suits cognizable either by the Covenanted or Uncovenanted Judges.*

Suits in para. 529—  
532 to be tried by the  
courts to which the  
officers sued are at-  
tached

Exception

528. Suits, described in the four following paragraphs (529 to 532) are to be received and decided by the court to which the officers sued may be attached, provided that if the amount be beyond the competence of such court, it shall be forwarded to the Judge, who will refer it to any other court competent to decide it, or he may place it on his own file; provided also, that suits against ministerial officers of the Criminal courts (exclusive of Police officers) shall be preferred to the Judge, who will at his discretion, refer it to any subordinate court competent to decide it, or retain it on his own file.—*Govt. Ord. 15th Jan 1834.*

Suits under reg  
1814, sec 12

529. Suits, under Regulation 27, 1814, Section 12, by the parties in a cause against their respective pleaders for any damages or injury which they may have sustained from any breach of the Regulations on the part of their pleaders, or from any fraudulent conduct or malpractices committed by them regarding the suit.—*Ibid, No. 10.*

Suits under reg 23,  
1814, sec.

530. Suits, under Regulation 23, 1814, Section 15, Clause 3, against vakeels of the Moonsiff's courts for all breaches of trust, fraud, or acts of wilful misconduct committed by them in their capacity of vakeels.—*Ibid, No. 11.*

Suits under reg 13,  
1793, sec 9, reg 12,  
1803, sec 12, and reg. 3,  
1827, sec 2 and 3

531. Suits, under Regulation 13, 1793, Section 9; Regulation 12, 1795; Regulation 12, 1803, Section 12; Regulation 3, 1827, Sections 2 and 3, against the ministerial officers of the Civil and Criminal courts for acts of corruption or extortion.—*Ibid, No. 12.*

Suits under reg 5,  
1831, sec 25, cl 2

532. Suits, under Regulation 5, 1831, Section 25, Clause 2, against the ministerial officers of the Sudder Ameens, Principal Sudder Ameens, for acts of extortion, corruption or misconduct. By the Government order of this day the provisions are extended to the ministerial officers of the Moonsiff's courts.—*Ibid, No. 13.*

Suits under the fol-  
lowing regulations to  
be instituted in the  
first instance before  
the judge, who will re-  
fer them, if proper to  
a subordinate court

Proviso regarding  
suits which the vakeel  
of govt must defend.

533. The Government orders of the 15th January, 1834, provide that the following suits, not involving charges respecting the honour and integrity of the officers concerned, should be instituted in the first instance before zillah or city Judges, who should be competent, after making the reference prescribed by Regulation 2, 1814, to try the suits themselves or refer them for trial to any subordinate court competent to decide them. But all suits which it may be necessary to defend through the vakeel of Government shall be tried at the sudder station or where the Judge's court is held.

Reg 3, 1793, sec.  
10; reg. 7, 1795, sec.  
7, and reg. 2, 1803,  
sec 7

534. Suits, under Regulation 3, 1793, Section 10; Regulation 7, 1795, Section 7, Regulation 2, 1803, Section 7, against Collectors, Salt Agents, Collectors of Customs, Mint and Assay Masters, and their respective assistants and Native officers, for any acts done in their official capacity in opposition to the Regulations.

Reg. 3, 1793, sec.  
11; reg. 7, 1795, sec.  
7, and reg. 2, 1803,  
sec. 15

535. Suits, under Regulation 3, 1793, Section 11; Regulation 7, 1795, Section 7, Regulation 2, 1803, Section 15, against Government by individuals considering themselves aggrieved under the Regulations by an act done by any of the aforesaid officers of Government, pursuant to a special order originating with the Governor General in Council, the Commissioners of Revenue, the Sudder Board of Revenue, or the Board of Customs, Salt and Opium.

536. Suits, under Regulation 14, 1793, Sections 12 and 29 ; Regulation 3, 1794, Section 12 ; Regulation 6, 1795, Section 16 ; Regulation 27, 1803, Section 16, by proprietors, farmers, and their sureties in confinement, (or otherwise,) for alleged arrears of revenue, against a Collector or tehseeldar, to try the justness of the demand. Reg. 14, 1793, sec. 12 & 29 ; reg. 3, 1794, sec. 12 ; reg. 6, 1795, sec. 16, and reg. 27, 1803, sec. 16.

537. Suits, under Regulation 14, 1793, Section 29 ; Regulation 6, 1795, Section 35 ; Regulation 27, 1803, Section 32, by a defaulter against the Collector, to shew cause why he is detained in confinement with a view to his release. Reg. 14, 1793, sec. 29 ; reg. 6, 1795, sec. 35, and reg. 27, 1803, sec. 32.

538. Suits, under Regulation 14, 1793, Section 46 ; Regulation 6, 1795, Section 51 ; Regulation 27, 1803, Section 48, of proprietors, farmers, or their sureties against Government, to try the validity of their engagements, or for acts done by the Collector in conformity to special orders of the Government, or the Commissioners, or Sudder board of revenue. Reg. 14, 1793, sec. 46 ; reg. 6, 1795, sec. 51, and reg. 27, 1803, sec. 48.

539. Suits, under Regulation 1, 1801 Section ; 10, Regulation 17, 1803, Section 51, for damages against Collectors for unnecessarily causing the attendance of proprietors and others. Reg. 1, 1801, sec. 10, and reg. 17, 1803, sec. 51.

540. Suits, under Regulation 24, 1793, Section 17 ; Regulation 34, 1795, Section 14 ; Regulation 24, 1803, Section 16, against a Collector for withholding payment of pensions. Reg. 24, 1793, sec. 17, reg. 34, 1795, sec. 14, and reg. 24, 1803, sec. 16.

541. Suits, under Regulation 27, 1793, Section 12, against the Collector or Government for withholding the payment of compensations for sayer duties. Reg. 27, 1793, sec. 12.

542. Suits, under Regulation 19, 1810, Section 15, against local agents for illegal acts. Reg. 19, 1810, sec. 15.

543. Suits, under Regulation 8, 1817, Section 10 ; Regulation 7, 1832, Section 16, to reverse sales of putnee talooks irregularly conducted by the Collector. Reg. 8, 1817, sec. 10, and reg. 7, 1832, sec. 16.

544. Suits, under Regulation 7, 1822, Section 31 ; Regulation 4, 1823, Section 2, instituted to reverse the summary decisions of Collectors making or revising settlements. Reg. 7, 1822, sec. 31, and reg. 4, 1823, sec. 2.

545. Suits, under Regulation 11, 1822, Section 20, on the part of Government against benamsee purchasers or revenue officers illegally purchasing lands at public sales. Reg. 11, 1822, sec. 20.

546. Suits, under Regulation 11, 1822, Sections 25 and 26, by proprietors against Government, the Collector, his officers and others, to annul public sales. Reg. 11, 1822, sec. 25 and 26.

547. Suits, under Regulation 14, 1793, Sections 15, 16, 19, 21 ; Regulation 6, 1795, Sections 22, 23, 26, 28 ; Regulation 27, 1803, Sections 22, 23, 26, and 28, against proprietors, farmers and sureties for resistance of revenue processes. Reg. 14, 1793, sec. 15, 16, 19, 21 ; reg. 6, 1795, sec. 22, 23, 26, 28, and reg. 27, 1803, sec. 22, 23, 26 and 28.

548. Suits, against a Collector and individuals for property in and possession of an estate, a portion thereof, and for the transfer of names in the Collector's registers. Suits for property, &c.

549. Suits, under Regulation 2, 1793, Section 9 ; Regulation 5, 1795, Section 9 ; Regulation 23, 1803, Section 8, for damages against the Native officers of Collectors for unauthorized acts. Reg. 2, 1793, sec. 9 ; reg. 5, 1795, sec. 9, & reg. 23, 1803, sec. 8.

550. Suits, under Regulation 3, 1794, Section 16, by Collectors against the heirs of deceased Native officers for Government claims of money, papers and accounts. Reg. 3, 1794, sec. 16.

551. Suits, under Regulation 3, 1794, Sections 18, 19, 20 ; Regulation 33, 1803, Sections 5 and 6, by a Native officer or his surety against the Collector to contest the demand for money, papers or accounts. Reg. 3, 1794, sec. 18, 19, 20, and reg. 33, 1803, sec. 5 and 6.

- Reg. 6, 1795, sec 6,  
and reg. 27, 1803, sec.  
6.      552. Suits, under Regulation 6, 1795, Section 6 ; Regulation 27, 1803, Section 6, by a Collector against his *tehseldars* for arrears of revenue.
- Reg 13, 1816, sec  
13      553. Suits, under Regulation 13, 1816, Section 14, by the Opium Agent against defaulting opium *ryots* for a return of advances, with interest and fines.
- Reg 13, 1816, sec.  
15      554. Suits, under Regulation 13, 1816, Section 15, to revise arbitration awards respecting the delivery of too liquid opium.
- Reg 13, 1816, sec  
16      555. Suits, under Regulation 13, 1816, Section 16, by the *ryot* against the Opium Agent or his officers for the confiscation of alleged and adulterated opium.
- Reg 13, 1816, sec  
16      556. Suits, under Regulation 13, 1816, Section 18, against Opium Agents and their Native officers of all descriptions, for acts done in their official capacity.
- Reg 13, 1816, sec  
16      557. Suits, under Regulation 13, 1816, Section 98, by an Opium Agent or any officer of Government against any person, or vice versa, on any matter relative to the cultivation, provision, transportation, sale, purchase, or possession of opium, not provided for by the Regulations.
- Reg 10, 1819, sec  
16      558. Suits, under Regulation 10, 1819, Section 8, by *molunges*, *beoparrees*, &c. for return of advances with costs and damages against a Salt Agent in cases of compulsory engagements.
- Reg 10, 1819, sec  
16      559. Suits, under Regulation 10, 1819, Sections 9 and 10, by such individuals against covenanted or uncovenanted European assistants and Native officers of a Salt Agency for the same transgression. Suits against *gomashdars* for the same transgression.
- Reg 10, 1819, sec  
16      560. Suits, under Regulation 10, 1819, Section 13, against Salt Agents, their assistants (covenanted or uncovenanted Europeans,) and Native officers, for any breach of the Salt Regulation.
- Reg 10, 1819, sec  
21, cl 9      561. Suits, under Regulation 10, 1819, Section 21, Clause 9, against Agents, their assistants, uncovenanted European and Native officers, for improper application of the rules for serving judicial processes on persons engaged in the salt manufacture.
- Reg. 10, 1819, sec  
21      562. Suits, under Regulation 10, 1819, Section 73, for damages for the seizure of salt by Native officers of Government (except salt officers,) not authorized to make such seizures, or by such, being authorized, when the salt was covered by a pass.
- Reg 10, 1819, sec  
21      563. Suits, under Regulation 10, 1819, Section 74, against the officers of the Salt Agents and of Superintendants of salt *chowkies* for irregular seizure not duly reported.
- Reg 10, 1819, sec.  
21 and 81      564. Suits, under Regulation 10, 1819, Sections 80 and 81, for damages against officers seizing salt alleged to be adulterated, to reverse the Magistrate's award for confiscation.
- Reg. 10, 1819, sec.  
22      565. Suits, under Regulation 10, 1819, Section 82, for damages against the officers of Government for improper seizures of salt alleged to be adulterated.
- Reg. 10, 1819, sec  
22      566. Suits, under Regulation 10, 1819, Section 82, between Salt Agents, Superintendants of *chowkies*, or any officer of Government, and any persons or any matter relative to the manufacture, provision, transportation, sale, purchase or possession of salt, not provided for by Regulation 10 of 1819.
- Reg 35, 1793, sec  
22      567. Suits, under Regulation 35, 1793, Sections 3 and 22 ; Regulation 2, 1812, Sec-

tion 20 ; Regulation 14, 1818, Section 2 ; Regulation 45, 1803, Sections 25 and 27, against Treasury Native officers for refusing to receive legal tenders.

3 and 22; r.  
sec. 20; r.  
sec. 2, of  
1803, sec.

568. Suits, under Regulation 35, 1793, Section 23 ; Regulation 45, 1803, Section 28, for the fining and dismissal of such Native officers for receiving improper coin.

Reg. 35, 1793, sec.  
23, and reg. 45, 1803,  
sec. 28.

569. Suits, under Regulation 35, 1793, Section 28 ; Regulation 45, 1803, Section 52 ; Regulation 2, 1812, Section 16, for damages against Collectors, Salt Agents, Mint and Assay Masters and their respective officers for any breach of the coinage regulations.

Reg. 35, 1793, sec.  
28; reg. 45, 1803, sec.  
52, and reg. 2, 1812,  
sec. 16.

570. Suits, under Regulation 45, 1803, Section 50, for dismissal and damages against public officers of Government and individuals for refusing certain legal tenders mentioned in Regulation 45, 1803, Section 50.

Reg. 45, 1803, sec.  
50.

571. Suits, under Regulation 1, 1799, Section 5, for damages against Police officers, or informers of illegal seizures in reference to the Sylhet chunam trade.

Reg. 1, 1799, sec. 5.

572. Suits, under Regulation 1, 1799, Section 5, against Government to reverse the Magistrate's order of confiscation of alleged contraband articles mentioned in Regulation 1, 1799, Section 6.

Reg. 1, 1799, sec. 5

573. Suits, under Regulation 2, 1800, Section 11, for damages against the stone quarry officers and others for illegal seizures.

Reg. 2, 1800, sec. 11

574. Suits, under Regulation 2, 1800, Section 12, against the Collector to reverse his orders of confiscation.

Reg. 2, 1800, sec. 12

575. Suits, under Regulation 1, 1824, Sections 6 and 7, by claimants against Government and the arbitrators for compensation or damages in reference to lands required for public purposes and salt manufacture.

Reg. 1, 1824, sec. 6  
and 7

576. Suits, under Regulation 1, 1824, Section 12, by proprietors against Government for the repossession of their lands become unfit for the purposes of the salt manufacture.

Reg. 1, 1824, sec. 12.

577. Suits, under Regulation 8, 1824, Section 14, against the Commissioner of Revenue, and Supervisor of river navigation and his people for official acts under this Regulation.

Reg. 8, 1824, sec. 14

## SECTION XLV.

### *Transfer of Suits.*

578. It is hereby enacted, that it shall be lawful for each of the Courts of Sudder dewanny adawlut, within the territories subject to the Presidency of Fort William in Bengal, to direct by an order authenticated by the official signature of the Register of such Court of Sudder dewanny adawlut, that the cognizance of any original suit, or of any appeal which may be brought before any Zillah or City court, subordinate to such Court of Sudder dewanny adawlut, shall be transferred to any other Zillah or City court, subordinate to the same Court of Sudder dewanny adawlut.—*Act III. 1837, Sect. 1.*

S. D. A. may direct any original suit or appeal brought before any subordinate zillah or city court to be transferred to any other subordinate zillah or city court

579. Provided always, that whenever either of the said Courts of Sudder dewanny adawlut shall, in the exercise of the power given by the preceding clause, direct the trans-

Whenever such transfer of any suit shall be made, the

record the  
Reg. 6, 1796 transfer  
of reg. 27 Judgts.

Suits within the  
competency of the M.  
to be ordinarily insti-  
tuted in their courts.  
Provide

fer of the cognizance of any suit, such Court of Sudder dewanny adawlat shall cause the reasons for such transfer, to be recorded on its proceedings.—*Ibid*, Sect. 2.

580. All suits within the competency of a Moonsiff to decide under the foregoing provisions, shall ordinarily be instituted in the Moonsiffs' courts. Provided nevertheless that it shall be competent to a zillah or city Judge to receive such suits, and to try them himself, or to refer them for trial to any other court subordinate to his authority, whenever he may see sufficient reason for so doing.—*Reg. 5, 1831, Sect. 7.*

Judges may trans-  
fer suits from one M  
to another, but must  
immediately report  
the same to the S. D.  
A

581. Doubts having been entertained, whether, under the provisions of Section 7, Regulation 5 of 1831, a zillah or city Judge can, of his own authority, transfer cases from the file of the Moonsiff, by whom they may be properly cognizable, to that of another officer of the same or a superior grade, the Court have determined that he is competent to make such transfer, whenever he may see good and sufficient reason for so doing. To enable the Court, however, to maintain an efficient check on the proceedings of the subordinate courts in this respect, the zillah and city Judges are required, whenever they may deem it proper to transfer any number of cases exceeding fifteen, from the file of one officer to another, immediately to report the same for the information of the Court. All such transfers should, of course, be duly entered in the column of remarks in statement No. 1, Part 1, in the memorandum marked B.—*Civ. Ord. Cal. C. 7th Dec., West. C. 21st Dec. 1839.*

Depending be-  
fore M may be tried  
the judge or refer-  
red for trial to an-  
other tribunal.

582. The zillah and city Judges may, for any reason that may appear to them sufficient, bring up for trial before them, or their Registers, or the Sudder Ameens, any causes, that may be depending before the Moonsiffs, or may transfer such causes from one Moonsiff to another.—*Reg. 23, 1814, Sect. 47, Cl. 1.*

Zillah or city judge  
may withdraw them  
and try them himself,  
or refer them to any  
other competent court  
subordinate to him.

583. Provided nevertheless, and it is hereby enacted, that it shall be competent to a zillah or city Judge to withdraw such suits from the court in which they may have been instituted, and to try them himself, or to refer them for trial to any other court subordinate to his authority, and competent in respect to the value of the suit whenever he may see sufficient reason for so doing.—*Act IX. 1844, Sect. 2.*

Suits not exceeding  
300 rs in amount will  
be decided by M, but  
for special reasons  
may be referred to S.  
4

584. In reply to the 2nd paragraph of the Judges letter, the Court propose to inform him that as the object of Government in the late arrangement was, that cases not exceeding 300 rupees in amount should be decided by officers receiving a salary of 150 rupees a month, and near to the homes of the parties, the general practice of referring such suits to Sudder Ameens must be considered objectionable, especially as the establishment of Moonsiffs was framed so as to admit of all such cases being tried by them, and no such assistance from the Sudder Ameens ought to be required. Section 47, Regulation 23, 1814, however, being still in force, such cases may on special reasons, to be assigned by the Judge in each case, be referred to Sudder Ameens or Principal Sudder Ameens.—*Con. 833, West. C. 27th Sept., Cal. C. 18th Oct. 1833.*

## SECTION XLVI.

### *The Nazim of Bengal.*

Cases to be refer-  
red to the Nazim

585. In complaints brought before any Zillah or City court in which it shall appear either by the application of the Nazim, or the representation of the defendant, at or

before the time of giving in his or her answer, or by the petition of the complainant, that both parties are servants or relations of His Excellency, or the widows or female descendants of the former Nazims of Bengal, the parties are to be referred for justice to the Nazim, or to any person whom he may appoint to dispense it. Upon a complaint being preferred against any servant or servants of His Excellency by persons of a different description, the court in which the complaint may be instituted, is either to refer it to His Excellency, or to hear it in the ordinary manner, according to its discretion, taking care at all times, and in all matters, to pay every proper attention to the dignity and long established rights of the Nawaub. Provided however, that in all cases in which either the plaintiff or defendant shall prefer the jurisdiction of the court to that of the Nazim, the Judge is to try and determine the suit in the same manner as if neither of the parties had been persons of the description specified in this section.—*Reg. 16, 1793, Sect. 10.*

586. It shall be competent to the Agent to the Governor General at Moorshedabad, or other officer, however denominated, exercising for the time being the control and superintendence of the affairs of the Nizamat on the part of the Governor General in Council to institute suit in the Courts of Civil judicature on the part of His Highness the Nazim of Bengal, and to conduct them as plaintiff or appellant in such manner as may appear proper.—*Reg. 19, 1825 Sect. 2.*

The agent to the G. G. at Moorshedabad may institute suits in the civil courts, on the part of the Nazim of Bengal

587. In like manner, should any suit be instituted in any Court of Civil judicature against His Highness the Nazim or Bengal, the ordinary notice shall be issued upon the Agent to the Governor General, or other officer aforesaid, who shall conduct the defence on the part of His Highness.—*Ibid, Sect. 3.*

When suits may be made against the Nazim, the notice is to be served on the agent, who will defend them

588. Provided always, that security shall not be required from, nor shall attachment in any case issue against His Highness, or against the Agent to the Governor General, or other officer aforesaid, but should the court require the payment of any costs, damages, or other sums of money, or the delivery of any lands, and after order duly made and served on the Agent, any unreasonable delay should arise, it shall be competent to the court to transmit a copy and translation of the decree or order to the Secretary to Government in the Persian department, when the Governor General in Council will issue such orders as may be necessary for the discharge of the amount due.—*Ibid, Sect. 4.*

The Nazim and the agent to the Govt. are exempted from furnishing security and from process of attachment

Order and decrees of the civil courts in such suits how to be executed

589. Suits, under Regulation 19, 1825, in which the Governor General's Agent is plaintiff or defendant on the part of the Nazim of Bengal, are to be received and decided by the Zillah Judge.—*Govt. Ord. No. 2, 15th Jan. 1834.*

Zillah Judge will decide suits under reg. 19, 1825

590. Suits, under Regulation 16, 1793, Section 10, in which both parties are servants or relations of the Nazim of Bengal, or the widows or female descendants of the former Nazims, or in which such persons are defendants only, must be preferred to the Judge as heretofore, provided that the Judge shall be competent to refer for decision to Principal Sudder Amceens or Sudder Amceens any suits of this nature which he may be himself authorized to decide under that section.—*Ibid, No. 1.*

Also suits under reg. 16, 1793, sec. 10, but he may refer them to P. S. A. or S. A.

591. In reply to a letter requesting to be informed whether a suit might be instituted under Regulation 4, 1812, in favor of the Nawaub Nazim, the Governor General's Agent at

The question whether a suit could be instituted under reg.



4, 1812, in favor of the nazim depended on the light in which he was viewed by govt for which information was to be sought direct of govt Moorshedabad was informed, that the solution of the question depended on whether Government considered His Highness in the light of a sovereign prince or not, and the court suggested that he should apply direct to Government for information on that point.—*Con.* 377, 8th April 1825.

## SECTION XLVII

*The Nawaub of Furruckabad.*

Jurisdiction of the zillah court of Furruckabad not to extend to the person of the nawaub  
Rule with regard to his dependants

592. The following article, being the sixth article of a treaty concluded with the Nawaub of Furruckabad, on the 4th of June, 1802, is hereby enacted into a rule, for the guidance of the Zillah courts of Furruckabad. "*Article sixth.*—The authority of the Court of Adawlut shall not extend to the person of the Nawaub, but as his connections and dependants are undefined, and as it is the object of the British Government to introduce a fair and impartial administration of justice, throughout the province of Furruckabad, it is agreed, that whatever complaint may be preferred against any of the Nawaub's dependants, shall in the first instance be referred to the Nawaub; and in the event of the complainant not receiving speedy justice, or being dissatisfied with the Nawaub's decision, the complaint shall be decided in the Adawlut."—*Reg.* 2, 1803, *Sect.* 8.

Constructions regarding the jurisdiction of the nawaub of Furruckabad

593. It must remain with the Judge, on the showing of the plaintiff, to determine whether the delay in the decision of the case has been such as to authorize his receiving the suit on the ground that the plaintiff has not received speedy justice.—*Con.* 843, *West C.* 8th Nov., *Cal.* C. 29th Nov. 1833, *Quest.* 1.

*Idem*

594. The decisions passed by the Nawaub should be enforced by himself, by means of the influence which he is supposed to possess over his own dependants. The courts are neither called on, nor authorized to aid in their execution, nor is the Nawaub himself vested with any special authority with this view by the Regulations.—*Ibid.* *Quest.* 2 and 5.

*Idem*

595. The Nawaub has no authority to receive or act on petitions of plaint except on reference from the Judge of the Zillah court. This is plainly required by the terms of the Regulation; all decisions which may have been passed by the Nawaub without reference from the court, are consequently null and void.—*Ibid.* *Quest.* 3.

*Idem*

596. A defendant being dissatisfied with the decision of the Nawaub, has no right of appeal, as he is necessarily a dependant of the Nawaub, the Regulation appears to consider that in becoming his dependant, he has voluntarily subjected himself to his authority in civil matters.—*Ibid.* *Quest.* 4.

*Idem*

597. The Court are of opinion that unless the defendant in his first pleading (the jawub-i-dawa) pleads his privilege as a dependant of the Nawaub he cannot afterwards assert it. This rule will, the Court observe, effectually check the practice mentioned by you of delaying the administration of justice, by requesting a reference of the case when it has nearly been brought to a conclusion.—*Con.* 843, *West C.* 8th Nov., *Cal.* C. 29th Nov. 1833.

*Idem*

598. On an enquiry from the Civil court—1. Were the provisions of the treaty concluded with Nazir Jung, the Nawaub of Furruckabad, on the 4th June, 1802, declared to extend to

the successors of that chieftain? 2. If they were, how should the courts proceed during the minority of the present Nawaub, Shoukut Jung, in cases of suits instituted against any of his dependants?—The Sudder dewanny adawlut, on the 26th May following, gave it as their opinion, in reply to the first question, "that the terms of the treaty concluded with the late Nawaub Nazir Jung must be considered to extend to his successor Shoukut Jung, the present Nawaub of Furruckabad;" and in reply to the second question, "that all suits properly referrible to him, (the Nawaub,) should be referred, during his minority, to his guardian or principal manager."—*Con. 162, 26th May 1811.*

599. Adverting to Section 8, Regulation 2, 1803, the Judge of Furruckabad requested the favour of instructions from the Court in the following case:—A suit has been filed, Nawaub Huasen Alli Khan *versus* Chote Beghum, (plaint, 2557-5-4, rent of jaghire) in which the defendant pleaded on the filing of the suit that she was one of the Nawaub's dependants, (Mootuwassil being the term in use here,) and the case was ordered as usual to be sent to the Nawaub for decision. The plaintiff however gave in a suwal stating that the Nawaub being a minor, all business was transacted by his guardian Nawaub Ahmed Yar Khan, to whom the defendant in this case is related, and praying that the case may be retained in the Zillah court.—The Court in reply stated, "The circumstance of the Nawaub being a minor will not prevent the reference of the case in the usual manner; the decision will of course be given by the guardian of the Nawaub, instead of the Nawaub himself."—*Con. 785, 31st May 1833.*

Idem.

600. It is hereby enacted, that from the first day of June, 1836, if the holder of a decree passed by the Nuwaub of Furruckabad under the provision of Section 8 of Regulation 2 of 1803, shall be unable to obtain execution of the said decree by the Nuwaub for a period of six weeks, (which period of six weeks shall be calculated from the said first day of June, if the decree was passed before the first day of June, and from the time of passing the decree, if it were passed on or after the said first day of June,) the said holder shall be at liberty to sue out execution of the said decree in the Zillah court of Furruckabad, and the Judge of that court, on application made to that effect, shall execute the decree in the same manner in which a decree of the said Zillah court is executed.—*Act XII. 1836.*

If the holder of a decree passed by the Nuwaub of Furruckabad had to obtain execution by the Nuwaub, the Zillah court may execute it.

601. Suits, under Regulation 2, 1803, Section 8, in which both parties are servants or relations of the Nawaub of Furruckabad, or the widows or female descendants of the former Nawaub, or in which such persons are defendants only, must be preferred to the Judge as heretofore, provided that the Judge shall be competent to refer for decision to Principal Sudder Ameens or Sudder Ameens any suits of this nature which he may be himself authorized to decide under that section.—*Govt. Ord. 15th Jan. 1831, No. 1.*

Suits under reg. 2, 1803, sec. 8 to be preferred to the Judge who may refer them to the native judges.

## SECTION XLVIII.

### *Special Rules regarding the Rajah of Benares.*

602. On a written complaint being preferred in the manner specified in Section 5, Regulation 4, 1793, either against the Rajah of Benares, or against any of the principal mahajuns of the city of Benares, being such as are known under the denomination of now-

Cases wherein defendants are not to be called on for security in causes tried before city and zillah courts.

putty, or against any of the baboos, (being persons of the Rajah's blood and family,) the security required from defendants in the said section, shall not be demanded of them, but the court is merely to issue a notice to such defendants, containing a short account of the nature of the demand, and fixing a day for him or them to appear either in person, or by vakeel duly authorized to answer to the claim; and in case of his or their failing to appear as required, or to conform to all the subsequent established process in the cause, such defendant or defendants, shall forfeit the honorary privilege hereby reserved to them, and be dealt with in all respects as other unprivileged defendants. This privilege, however, is to be construed to extend only to the cases above specified, in which such persons may be defendants in the City court, or the Zillah courts, and to suits which may be directed to be tried in the first instance in the Provincial court of appeal, or the Sudder dewanny adawlut, pursuant to orders from the Governor General in Council, or in the Provincial court of appeal, in conformity to directions from the Sudder dewanny adawlut, and not to any cases of appeal, in which whether the appeal be lodged in the Provincial court of appeal or the Sudder dewanny adawlut, the said persons are to give the same securities, as other persons concerned in appeals in those courts. — *Reg. 8, 1795, Sect. 10.*

Cases to be referred to the Rajah

603. In the event of any complaints being preferred to the City court, or to any Zillah court, or to the Provincial court of appeal, relative to undue exactions of revenue, or any breach of agreement in respect to pottahs, or the resumption of kishnarpun, or other description of lands exempted from the payment of revenue, in the jaghure mehals of Budhooe, or of Kera Mungrore, in the Rajah's hereditary zemindary of Gungapore; the complaints are not to be taken cognizance of in the Courts of justice, but the parties are to be desired to make application to the Rajah, or to his dewan; and in case of their not obtaining justice, they are to have recourse to the Collector, who will proceed to bring such causes to a just and equitable termination, in the manner stated in the under specified article of an agreement, concluded by the Resident with Rajah Mahipnarain, under date the 27th October, 1794. An option however is reserved to the persons deeming themselves injured, to prefer their applications for redress in the first instance to the Collector, who in all cases, by reference to and communication with the Rajah, and his officers, is to cause substantial justice to be rendered to the parties. — *Reg. 15, 1795, Sect. 3, Cl. 1.*

Article about

604. Article third, of an agreement concluded by the Resident at Benares with Rajah Mahipnarain, under date the 27th October, 1794 :—“ In cases of complaints relative to revenue causes, or charity ground, &c. being preferred to the Huzoor, (*i. e.* the English Government,) by any parties residing within the jaghire, and ultumgah, &c. the personal or private lands of Rajah Mahipnarain Sing, the enquiry thereinto shall be made, in like manner as such cases were amicably conducted between Mr. Duncan and the Rajah; that is, that since the gentleman holding the station of Collector will have more concern and connection with such matters, than the other gentlemen, the rule shall be, that with the privacy and ascertainment of the said Collector, (who is to have regard to the honor, and dignity of the said Rajah,) such causes are to be settled through the channel of the said Rajah, or of the officers of the said Rajah's catcherry; it being at the same time under-

stood, and provided, that as it is a duty incumbent on the Honourable Company's Government, to distribute and ensure the attainment of justice to all the inhabitants of Benares, should it so happen, that after referring such complaints to the Rajah, or to his officers in the cutcherry, the contentment of the parties complaining and aggrieved, shall not be obtained, the Rajah shall, relative to the adjustment of such causes, listen to, and approve of, the suggestions and advice of the Collector, in like manner as hath been practised in the time of Mr. Duncan; and it is also incumbent on the said Collector, in all proper and just cases, to show the utmost attention possible to the Rajah's accommodation, and to hold in view the maintenance of his honour and dignity, such being entirely consistent with the wishes of Government; and if (which God forbid,) any such subject should arise, as cannot be settled between the said Collector, and the Rajah aforesaid, the decision in such case shall depend on the Governor General in Council."—*Ibid*, Cl. 2.

605 Regulation 15, 1795, is hereby declared subject to the following modifications. Reg. 15, 1795, modified  
—*Reg.* 7, 1828. *Sect.* 2.

606. The superintendence of the mehals abovementioned shall be vested in such officer as the Governor General in Council may, from time to time, by an order in council, appoint.—*Ibid*, *Sect.* 3. Superintendence of Jhindore, &c. consisting the family domain of rajah of Benares, to be vested in such officer as the govt. may appoint

607 In order to secure for the inhabitants of these mehals, the administration of civil justice on the principles in force throughout the rest of the province, a Native Commissioner shall be maintained by the Rajah in each of the purgunnahs referred to in Regulation 15, 1795, for the purpose of taking cognizance, in the first instance, of the revenue causes hereafter specified.—*Ibid*, *Sect.* 16. Certain offences—enforce payment—arrear of rent strictly prohibited, and to subject the offender to prosecution before the criminal court

608. The nomination of individuals to the office of Native Commissioner will be made by the Rajah, but previous to such appointments taking effect, he shall communicate what information he may have obtained regarding the age, character, and past employment of the individuals in question to the Superintendent, who shall withhold his concurrence in cases of notorious bad character or incapacity, having regard, however, as far as possible, in the mode of doing so, to the Rajah's honour and dignity.—*Ibid*, *Sect.* 17. The nomination of commissioners will be made by the rajah, but the confirmation to rest with the superintendent.

609. No Native Commissioner appointed under this Regulation shall be removed from office without sufficient cause, and in all cases of removal, the Rajah shall act in concert with, and by the advice of, the Superintendent.—*Ibid*, *Sect.* 18. The native commissioner not to be removed from office, & the rajah to act in cases of removal in concert with and by the advice of supt.

610. The Native Commissioners shall be liable to a criminal prosecution for corruption, extortion, or other gross misdemeanor, and on conviction before the Court of circuit, shall be subject to fine and imprisonment, proportionate to the nature and circumstances of the case.—*Ibid*, *Sect.* 19. The native commissioners liable to criminal prosecution for certain offences, and to fine and imprisonment on conviction

611. Persons invested with the powers of a Native Commissioner, under this Regula- Powers and autho-

city of a native commissioner

tion, are authorized to receive, try, and determine, all suits preferred to them, against any inhabitant of their respective jurisdictions, relative to land of every description, or the rent, revenue, or produce thereof situated therein, provided the cause of action shall have arisen within the period of twelve years previously to the institution of suits.—*Ibid*, Sect. 20.

N commissioners may hear suits for rent, revenue or the produce of rent free lands

612. Held, with advertence to the terms of Section 20, Regulation 7, 1828, that there is nothing to bar the cognizance under it, by the Native Commissioners appointed according to that Regulation, of suits for the rent, revenue, or produce of lakhuraj lands.—*Con. 1224, West. C. 14th June, Cal. C. 12th July 1839.*

Rules for the guidance of the native commissioners

613. In receiving, trying and determining such cases, the Native Commissioners shall be guided by the rules contained in Regulation 23, 1814, and in points not expressly provided for in that Regulation, they shall observe as nearly as may be practicable the rules prescribed for the guidance of the Zillah and City courts, in the trial and decision of civil suits.—*Reg. 7, 1828, Sect. 21.*

Exception

614. The rule, which prohibits Native judicial officers from taking cognizance of cases, in which a British subject, or an European foreigner, or an American, may be a party, shall not be held applicable to the Native Commissioners, appointed under this Regulation.—*Ibid* Sect. 22.

N commissioners to execute their decisions, subject, in cases of appeal, to instructions of supt.

615. The decision of the Native Commissioners shall be executed by themselves under the rules prescribed in the general regulations for the execution of decrees, provided however that, if the case be appealed, the Commissioner shall be guided by such instructions relative thereto, as he may receive from the Superintendent.—*Ibid*, Sect. 23.

Proceedings of commissioners subject to revision by supt, in cases appealed within six months

616. The proceedings of the Native Commissioners shall be subject to the revision of the Superintendent, who, in the event of an appeal being preferred to him within the period of six months from the date of any such decision, will call for the papers, and after directing such further investigation to be held, as he may judge necessary, will confirm, modify or annul the order or decision of the Native Commissioner, as may appear proper: provided always, that it shall be competent to the Governor General in Council to supersede the order of the Superintendent, on being referred to by either party for that purpose.—*Ibid*, Sect. 24.

Govt empowered to supersede the order of the supt., if referred to

Penalties for resistance of process declared applicable to cases under this regulation.

617. The penalties prescribed by the Regulations for resistance of process in revenue or judicial matters, are hereby declared applicable to all cases of the same nature, arising out of the process provided for by this enactment.—*Ibid*, Sect. 25.

The revenue and judicial administration of the mehals to be regulated according to the regulations, except when otherwise directed by this regulation.

618. It is hereby further declared and enacted, that, except when otherwise directed by the foregoing provisions, the revenue and judicial administration of the mehals herein referred to, shall be regulated by the principles and spirit of the existing Regulations, and where those may not be applicable, by equity and good conscience.—*Ibid*, Sect. 26.

## SECTION XLIX.

*Independent Chiefs.*

619. *Extract from a letter from the Honourable the Court of Directors, dated 27th May, 1835, par. 36.*—With regard to the interference, whether of our tribunals, or of our political officers, in civil cases against subjects of independant chiefs, you have adopted the sound principle, that the complainant must be left to seek justice from the legitimate superior of the party against whom his claim is preferred, unless that party be resident or possess property within our territories. It was no less proper to interdict our officers from taking cognizance of civil claims preferred against independant chiefs, whether by their own subjects or by others, or of cases of any description between independant chiefs and persons residing or possessing property in their dominions. Interference may sometimes be unavoidable, in consequence of general maladministration; but it seldom can be justified in individual cases, unless where the sufferer is entitled to our protection by some positive engagement.—*Civ. Ord. 4th March 1836.*

The company's officers not to take cognizance of civil claims against independant chiefs.

*The Raja of Burdwan*

620. The Raja of Burdwan having failed to attend to a notice of court, on the ground that the usual mode of service by letter was not followed, the Sudder dewanny adawlut held that he was bound to attend to it, stating at the same time his objections to the mode of service.—*Rep. Sum. Cases, 29th Dec. 1840, p. 51.*

The rajah of Burdwan was bound to attend to the notice of court, stating his objections, if any, to the mode of its service.

## SECTION L.

*Suits in which Sovereign Native Princes are interested.*

621. In cases, in which sovereign Native princes, whether residing within the British territories or otherwise, shall have claims to prefer as individuals, to lands or other things, the cognizance of which is vested by the general constitution of the country in the Courts of civil judicature, it shall be competent to the Governor General in Council, to order a suit to be instituted through the medium of the public officers, for the recovery of the lands or other things which may be so claimed, in the court, which on the principles of the general Regulations, is authorized to enquire into, and decide upon, the right to the disputed property.—*Reg. 4, 1812, Sect. 2, Cl. 1.*

How claims of sovereign native princes on individuals may be prosecuted, and decided upon.

622. In like manner, should a suit be instituted in any of the established Courts of civil judicature, by any zemindar or other person for the recovery of lands or other things, in the occupancy of any Native prince, whom it would be improper to require to defend the action himself, it shall be competent to the Governor General in Council to order such suit to be defended by the public officers.—*Ibid. Cl. 2.*

The govr. genl. in council may order the public officers to defend suits brought by individuals against such sovereign native princes.

623. Suits which may be instituted or defended under the preceding section, shall be conducted by the Collectors of the land revenue, aided by the vakeels of Government at the City, Zillah, and Provincial courts, and at the Sudder dewanny adawlut, under the directions of the Board of Revenue in the provinces of Bengal, Behar, and Orissa; and of the Board of Commissioners in the Ceded and Conquered Provinces, and in the province

By whom suits so instituted or defended shall be conducted.

of Benares; which boards will of course on all such occasions be furnished by the Governor General in Council with such information and instructions as may appear necessary to enable them duly to superintend the conduct of the prosecution or of the defence.—*Ibid*, Sect. 3.

A summary of the decree passed in any case of that nature wherein govt may be a party, shall be transmitted immediately to the secy in the judicial department for the orders of govt

624. In all original suits and appeals, in which Government may be a party under the provisions of the present Regulation, the court which may pass judgment, shall, in addition to the copies of the decrees required to be delivered to the parties, transmit a summary of the decree with as little delay as possible, in the English language, to the Secretary to Government in the Judicial department, for the information of the Governor General in Council, who on receipt of such summary will issue any orders to the Board of Revenue or Board of Commissioners, which the case may appear to require, or will cause the necessary notification to be made to the person on whose behalf the cause shall have been prosecuted or defended, of the final judgment given on the action.—*Ibid*, Sect. 4.

How suits under reg. 4, 1812, are to be instituted and defended

625. Suits under Regulation 4, 1812, instituted or defended by the officers of Government on the part of sovereign Native princes will be received and decided by the covenanted Judge.—*Court. Ord. No. 3, 15th Jan. 1834.*

## SECTION II.

### *Persons not connected with the Courts, convicted of bribery and extortion.*

Punishment for persons not attached to the courts, convicted of corruption or extortion.

626. If a Native servant, or dependant of any Judge of a Civil or Criminal court of judicature, not being a public officer attached to the court, shall extort, or receive, directly or indirectly, any money or other valuable consideration, under any pretence whatever, from any party or person, on account of any suit, to be instituted, or that may be depending, or have been decided in the court, he shall be committed as for a contempt of court, and be punished by a fine equal to treble the sum of money extorted, or received, or by imprisonment, or corporal punishment, at the discretion of the court, and the Judge is required to discharge such servant or dependant, and never to employ him, directly or indirectly, in his public or private capacity. If the offender shall not appeal against the decree within the limited time, or if an appeal shall not lie from the decision, or, if the decision shall be confirmed in appeal, the court by which the final decree may be passed, shall transmit a copy of it to the Governor General in Council, who, in addition to the penalties or punishments specified in the decree, will, if there shall appear to him grounds for so doing, declare the offender incapable of serving Government in any capacity.—*Reg. 13, 1793, Sect. 11.*

How suits under reg. 13, 1793, sec. 11, and reg. 12, 1803, sec. 14, are to be disposed of.

627. All suits under Regulation 13, 1793, Section 11; Regulation 12, 1803, Section 14, are to be received by the Principal Sudder Ameen, Sudder Ameen or Moonsiff as they may be cognizable by one or other. A suit so received to be immediately forwarded to the Judge who will use his discretion as to trying it himself, or referring it to any other Principal Sudder Ameen, Sudder Ameen or Moonsiff, by whom it may be cognizable, provided that in all such cases a special or regular appeal as the original case may be decided by the Judge, or by any subordinate court, shall lie to the Sudder dewanny adawlut. A Native

servant or dependant of any Judge of Civil or Criminal court not being a public officer attached to the court, extorting or receiving, directly or indirectly, money or other valuable consideration from parties in suits instituted, pending or decided, shall be committed for a contempt of court and be punished by a fine equal to twice the sum of money extorted or received, or by imprisonment at the discretion of the Court.—*Govt. Ord. No. 15.*

Punishment to be awarded to a native servant or dependant of any civil or criminal Judge, for extortion and other misdemeanors.

628. The same rule applies to the servants of uncovenanted Judges.—*Ibid, No. 16.*

And to the servants of uncov. Judges.

## SECTION LII.

### Miscellaneous.

629. Under instructions from the Government, I am desired by the Court to inform you, that the Honourable the Court of Directors have prohibited the creation of unauthorized funds in the public offices, through the means of fines, or from deductions, made from the pay of establishments; and have directed that sums thus accruing should be carried to the credit of Government. *Cir. Ord. 6th Aug. 1841.*

Fines and deductions from the pay of the public establishments to be credited to Govt.

630. References and applications before transmitted to the Board of Revenue will be in future made to the local Commissioners of revenue and circuit appointed under Regulation I of 1829. — *Cir. Ord. 13th March 1829.*

Reference heretofore made to the Bd. of Rev. to be made to the Comm.

631. A question has arisen, whether advertisements for the public sale of lands and other notifications, published by the Collectors, which are required by the Regulations to be affixed in the court-room of the Zillah or City dewanny adawlut, should be so affixed, without any direct application to the Judge; the Regulations not containing any express provisions upon this point; and whether proclamations which the zillah and city Judges and Magistrates may have occasion to publish in the Collector's cutcherry, should be transmitted for that purpose to the Collector?—The Court are of opinion, that all advertisements for public sales, or other notifications, issued by the Collectors, and intended to be affixed in the court-room of the Zillah or City dewanny adawlut, should bear a superscription, under the signature of the Collector, requesting the Judge to cause the same to be read and affixed in the court-room of the Dewanny adawlut; that it should be enclosed in a cover addressed to the Judge; and should be delivered to the Judge (or in his absence to his Register,) who on receiving it, should note and attest the date of receipt, and cause it to be immediately read and affixed in the court-room, as requested.—The Court are likewise of opinion, that a similar mode of proceeding should be observed with respect to any proclamation which the Judges and their Registers, or the Magistrates and their Assistants, may have occasion to publish in the cutcherries of the Collectors; that the proclamation in such cases should be enclosed in a cover addressed to the Collector, with a superscription under the signature of the Judge, Magistrate, Register, or Assistant, to the same effect as that above noticed; and that the Collector (or in his absence, his Assistant,) on receiving it, should note and attest the date of receipt, and cause it immediately to be read and affixed in his cutcherry, as requested.—*Cir. Ord. 9th April 1817.*

Mode in which advertisements and notifications of the collector are to be affixed in the civil and criminal courts, and those of the courts in the collector's cutcherry.

632. Under instructions from the Government I am directed by the Court to request, that you will take particular care that no delay occurs in the publication of the advertisements, received at your office, for the sale of estates on account of arrears of revenue.—*Cir. Ord. Cal. C. 10th Aug., West. C. 7th Sept. 1839.*

No delay to be allowed in publishing advertisements for the sale of estates on account of arrears



Every public functionary is bound, when required, to take charge of public property.

633. *Extract from a letter from the Honourable the Court of Directors, dated 16th May, No. 31 of 1838.*—"You express an opinion that it must be considered the duty of every functionary under Government, to take charge of public property, when required to do so. We trust that this opinion has been duly promulgated, for in the case which gave rise to our observations, all the officers at the station declined the responsibility of taking charge of certain public stores."—*Cir. Ord. 23d Nov. 1838.*

Mode in which native names of men and places are to be written in English

634. The Court having noticed the very careless manner in which the Native names of men and places are occasionally written in English, direct me to call your attention to the subject, and to request that in your letters and statements you will adhere as closely as possible to the orthography of the original.—*Cir. Ord. 18th May 1832.*

The new system of weights to be introduced into every civil department

635. Ordered that instructions be issued to the proper officers for the introduction, as far as may be practicable, of the new system of weights into all branches of the departments under the control of the Civil courts.—*Cir. Ord. West. C. 10th April, Cal. C. 1st May 1835.*

The vernacular gazettes to be filed and preserved, and made accessible to all

636. In continuation of the Circular of the 8th July last, the Court desire to know whether you have satisfied yourself, (if not, you will be pleased to do so.) that the Gazettes in the vernacular languages are carefully filed and preserved in the several offices to which they are supplied, and made accessible to parties wishing to consult them or obtain extracts of their contents.—*Cir. Ord. 16th Sept. 1842.*

*Ibid.*

637. In continuation of the Circular No. 3358, of the 16th September, 1842, I am directed by the Court to annex for your information, extract (paragraph 3) of a letter from the officiating Judge of Seharunpore, dated the 4th instant, and to enjoin upon you, the strict and punctual observance of the plan therein described. It is essential to the maintenance of uniform practice in the subordinate Civil courts, that the Gazettes in which the Circular orders issued for their guidance appear, should be regularly filed and carefully bound into annual volumes, and it is hoped that the rule now prescribed will suffice to secure this desirable object.—*Cir. Ord. 17th June 1845, par. 1.*

The judicial officers personally responsible for the preservation of the official gazettes

638. You will be pleased to inform the judicial officers subordinate to your authority, that they will be held personally answerable for the preservation of the official Gazettes supplied by Government for their use, and that they will be required to replace those numbers of the Gazette which may be found, on examination at the end of each year, to have been injured, defaced, or mislaid.—*Ibid, par. 2.*

The file of the official gazettes to be sent in annually for the inspection of the judges.

639. I am induced to think that the Agra Government Gazettes, in which these Circular orders appear, are very irregularly kept and filed by the Moonsiffs, and propose to require an acknowledgment in future, at the expiration of each month, that the Gazettes forwarded to, have reached them, and in future at the expiration of the year to require (as is usual with tehseeldars) that they be sent in to me for inspection, that the file is complete, and that they have been properly bound, and kept, and have called for those of previous years to ascertain this point.—*Extract (par. 3) of a letter from the officiating Judge of Seharunpore, dated 4th June, 1845.*

Rule regarding the wearing of slippers by natives in the courts of justice.

640. His Excellency in Council has judged it proper to direct, that Natives shall not be prevented from wearing their slippers at any place or upon any occasion, where, by custom al-

ready established, it has been usual to admit them with their slippers.—To guard against any recurrence of opposition to the practice, and prevent the dissatisfaction which must ever arise from the ill-judged and impolitic prohibition of any general and long established usage, his Excellency in Council has been further pleased to direct, that his orders be circulated to the Courts of justice, for their information and guidance. The Sudder dewanny adawlut have accordingly directed me to communicate them to your Court, and to desire that you will extend the communication to the several courts within your division.—*Cir. Ord. 2nd Sept. 1802.*

641. Provision is made in the new rules about to be submitted to Government by the committee for the revision of Post Office affairs, &c. for the franking of all letters *bonâ fide* on the public service relating to the business of their offices, by Sudder Ameens, and also for the franking of all such letters by Moonsiffs and all Native judicial and revenue officers, when addressed to the European or Native authorities with whom they may have to correspond on the public service, but only within their respective districts or divisions.—*Cir. Ord. Cal. C. 16th Dec. 1836, West. C. 20th Jan. 1837.*

Franking of letters  
by S. A. and M.

642. A reference having been made to the Post Master General, in consequence of some despatches, containing the proceedings of the Magistrate in cases referred to the Nizamut adawlut, having recently been much damaged, that officer has suggested the necessity of making up all despatches of consequence, under a double cover of wax-cloth, during the rainy season: and it being obviously of importance to preserve from injury all original proceedings and other papers, requiring particular security, transmitted to the Courts of Sudder dewanny adawlut and Nizamut adawlut, during the season above-mentioned, I am directed to request, that you will be particularly careful to observe the above precaution in future. You are further requested to instruct the several Judges and Magistrates in your division, to observe the same rule, in forwarding any original proceedings to your court or to the Nizamut adawlut, during the rainy season.—*Cir. Ord. 9th Sept. 1813.*

All despatches of  
importance to be sent  
under a double cover  
of wax-cloth during  
the rainy season.

643. The Courts of Sudder dewanny and Nizamut adawlut having frequently observed that the records of proceedings of cases sent by the different courts, during the rains, have been so damaged by the wet as to be illegible and useless, and that the wax-cloth used for packing the proceedings is not always of the best quality, I am directed by the courts to request, that you will be careful to use the best wax-cloth procurable for the packing of all papers transmitted from your office, and that you will issue similar instructions to the several Judges and Magistrates under your jurisdiction.—*Cir. Ord. 19th Sept. 1823.*

The best wax-cloth  
procurable to be used

644. The Court desire that you will be careful in having all parcels you may transmit by the dawk banghy enveloped in two or three folds of strong country paper and plain cloth. The Court recommend plain in preference to wax-cloth, as there appears to be danger that the contents of the packages may be injured by the melting of the wax from the application of the hot dammer.—*Cir. Ord. 21st May, 1824.*

Parcels sent by  
dawk banghy to be  
packed in two or  
three folds of strong  
country paper and  
plain cloth

645. The Court further direct me to call your attention to the 4th paragraph of the Post Master General's letter, and to desire that you will conform to the suggestions contained therein, wherever the parcel to be transmitted may not exceed the weight specified.—*Letter of the Post Master General.*—I suggest that in all practicable cases, paper parcels of proceedings be made up of 25 sicca weight, and sent on different days by the regular dawk, which will give them the

Paper parcels of  
proceedings to be  
made up of 25 sicca  
weight, and sent on  
different days.

best chance of escape from injury, as they will have the additional security of the wallet, and besides that, of travelling much more expeditiously.—*Ibid.*

The ends of banghy parcels to be sewed up before they are sealed.

646. I am directed to transmit, for your information and guidance, the accompanying extract from a letter under date the 13th instant, from the officiating Post Master General, written in reply to one addressed to him by order of the Court, on the subject of certain parcels having been received in this office open at the ends. You are requested to attend to the suggestion of the officiating Post Master General in despatching parcels by the regular mail or banghy post in future.—“To prevent recurrences of this carelessness, I imagine it will only be necessary to call the attention of the district despatching officers to the subject, instructing them to sew up the ends (of banghy parcels) before sealing, for without this precaution, or without an outer tape tying, it cannot be expected that they will be able to bear the friction of the mail conveyance for hundreds of miles. I shall address a circular to the several Post Masters, enjoining them to be careful not to receive parcels insecurely fastened, and I hope this will serve to obtain security.”—*Cir. Ord. 28th Feb. 1840.*

The judges will assign a distinct place of deposit for the records of the subordinate courts

647. An instance of the destruction by fire, in the Goruckpore district, of the greater part of the records of pending suits in a Moonsiff's court, having been the cause of much embarrassment and delay, the Court call the attention of the Judges to the importance of assigning a distinct place of deposit for the records of the subordinate courts, (which, under the rule requiring the monthly transmission of suits decided by them to the Judge's office, ought not to comprise more than the papers of cases under investigation,) with a view to their security from fire or other injury.—*Cu. Ord. 18th Feb. 1842.*

The use of sealing wax to be discontinued in official despatches, the envelopes to be closed with gum arabic, and the office seal to be stamped with lamp black

648. The Honourable the President in Council having had under his consideration a proposition for discontinuing the use of sealing wax in all official despatches, is pleased to direct that, in future, the public offices under the Bengal Presidency close the envelopes of their letters with gum arabic, and discontinue the use of sealing wax where it can be dispensed with. The seal of office is to be stamped with lamp black.—*Gort. Ord. 17th Aug 1842.*

Mode in which Moonsiffs are to be provided with cutcherries at the public expense

649. I am directed by the Court, to transmit to you, for your information and guidance, a copy of the orders of Government, No. 1113, of the 18th ultimo, and of the correspondence therein alluded to, regarding cutcherries for Moonsiffs.—“I am directed to forward for the

Letter No. 893, 21st May, 1845, to Sec Govt of India, Home Dept

Letter No. 399, 31st Do from Under Sec Govt of India

purpose of being laid before the Sudder Court, copy of the correspondence as per margin, on the subject of providing Moonsiffs with cutcherries at the expense of the State. 2. In order that

immediate effect may be given to the sanction conveyed in Mr. Under-Secretary Melvill's letter of the 31st ultimo, the Court are requested to inform the Moonsiffs, through the zillah Judges, that the Government are prepared to purchase the present cutcherries as they stand at a price not exceeding rupees 75 each, provided the Judges are satisfied, after due enquiry that the buildings are worth that sum or any lesser amount which the proprietors may report to have been expended in their construction. 3. The Judges are authorized to pass in future, in their office, contingent bills, charges not exceeding one-fourth of the above sum (75 Rs.) for the annual repairs of each Moonsiff's cutcherry; charges not exceeding one-half, where the repairs are made after an interval of two years and so on. In the event of the total destruction of a Moonsiff's cutcherry by fire or other accident, the case must be reported to Government. 4. It is to

be understood that these orders are not applicable to Moonsiffs who already hold their courts in public buildings or in their own private dwellings. The latter officers should be allowed to draw on the district treasuries any sums not exceeding rupees 75, for the purpose of erecting new cutcherries apart from their dwelling houses. 5. Every Moonsiff, on taking charge of his office, should be required to report to the Judge, the state in which his predecessor has made over the cutcherry to him."—*Cir. Ord. 3d July 1845.*

650. The Court have reason to believe that the Moonsiffs have not generally availed themselves of the permission accorded to them by the 4th paragraph of the orders of Government of the 18th June last, No. 1113, to draw on the district treasuries to the extent of rupees 75, for the purpose of erecting new cutcherries apart from their private dwellings. They direct therefore that those Moonsiffs who have not yet erected buildings for cutcherry in your district be required to do so without delay.—*Cir. Ord. 11th April 1846.*

651. Judges, who used formerly to submit contingent charges for the sanction of the Provincial court, are now to apply to the Civil Auditor or direct to Government.—*Con. 668. 13th Jan. 1832.*

Idem.

Judges to submit contingent charges to the civil auditor, or direct to govt.

## CHAPTER II.

### MINISTERIAL AND LAW OFFICERS AND VAKEELS OF THE COURTS.

#### SECTION I.

##### *Ministerial Officers of the Zillah and City Courts—their Appointment, Resignation and Dismissal.*

Public offices declared not to be hereditary and may at any time be abolished. Govt

1. Nothing in this Regulation shall be construed to establish a claim of inheritance to any public office whatever; or to prevent the abolition of any such office, by order of the Governor General in Council, whenever he may judge it unnecessary to continue the same for the public service.—*Reg. 5, 1804, Sect. 24.*

Final appointment and removal of Ministerial officers and vakeels of court rests with J., subject to orders of Govt. or S D A.

2. The final appointment and removal of the Native ministerial officers and vakeels of the Court will rest with the Judge, subject to such orders as the Government or Snidder dewanny adawlut may see fit to issue.—*Cir. Ord. Cal. and West. C. 2nd March 1832.*

Idem

3. In modification of that part of the second paragraph of my circular letter of the 2nd ultimo, which requires the zillah and city Judges under Regulation 5, 1831, to report for the Court's confirmation, the appointment and removal of Native ministerial officers and vakeels, I am directed by the Court to inform you, that such report is not considered necessary; and that you are competent, of your own authority, to appoint and remove such officers and vakeels; subject however to the control of the Court, or Government, when either may see occasion to interfere.—*Cir. Ord. Cal. and West. C. 13th April 1832.*

All officers of Govt exempt from ferry tolls, within the division to which they belong when moving in that division on the public service

1. In pursuance of the orders of the Government (dated the 9th instant,) the following copy of a letter, (No 459, of the 28th ultimo,) from the Under-Secretary to the Government of India, in the Home department, exempting all Government officers from the payment of ferry tolls when proceeding on the public service is circulated for general information.—“I am directed to acknowledge the receipt of your letter, No. 981, dated the 28th ultimo, with its enclosure, and in reply to state, for the information of the Right Honourable the Governor of Bengal, that the Governor General in Council approves of the proposition submitted by Mr. Dampier, Superintendent of Police, Lower provinces, and authorizes that all officers of Government be exempted from the payment of ferry tolls within the division to which they may belong when they are moving in those divisions on the public service; and any officer not entitled to exemption under this definition of the rule who may prefer a claim to exemption based on the principle which the rule is intended to establish, will refer his claim for special consideration and orders to the department to which he belongs.”—*Cir. Ord. 25th July 1845.*

5. Whenever the zillah or city Judges may see cause for the removal of any of their head Native officers on the ground of misconduct, incapacity, or otherwise; they shall communicate to such officer the grounds upon which they may consider him undeserving of continuance in his station; and call upon him to state what he may have to offer in his defence.—*Reg. 5, 1804, Sect. 6.*

Rule of proceeding to be observed when there may appear to be cause for the removal of any head native officer. f

6. In like manner whenever the zillah and city Judges may see cause for the removal of any of the Native officers therein referred to [that is officers whose salary and other allowance may amount to ten rupees per mensem or upwards.] they shall communicate to such officer the grounds upon which they may consider him undeserving of continuation in his station, and call upon him to state what he may have to offer in his defence.—*Ibid. Sect. 16.*

Idem

7. The several officers of Government in the judicial department who are already restricted by their official oaths, or by the known declarations and orders of Government, from deriving any personal advantage whatever from their fixed establishments of Native officers, are further hereby positively prohibited from making any alteration whatever in the distribution of the salaries of such officers, or in the number and designation of the several descriptions of Native officers, which now compose, or may hereafter compose, their authorized establishments, without the express sanction of the Governor General in Council.—*Ibid. Sect. 23.*

Officers of govt. specified, prohibited from making any alteration in the fixed distribution of the salaries of native officers, or in their number and designation, without the sanction of government

8. You will suspend in your entcherry a list of the Native officers on your establishment, specifying their names, official designation, and salary.—*Cir. Ord. 21st June 1815.*

A list of the officers, with their names, &c. to be suspended in the entcherry

9. An instance having come to the knowledge of the Government of Native ministerial officers being entertained on lower salaries than those fixed by the Government for the situations they held, and the difference carried to the public credit, the Court, in pursuance of instructions received by them, intimate to the different officers under their control that the Honourable the Deputy Governor considers this practice to be extremely objectionable, and desires that it may not, under any circumstances, be repeated.—*Cir. Ord. 19th Jan. 1844.*

No native officer to be entertained on a salary lower than that fixed by govt

10. I am directed by the Court to request, that you will forward a return, drawn up agreeably to the annexed form, of the names of the serishtadar, pashkar and nazir at present attached to your court, with as little delay as may be practicable, and to intimate to you the desire of the court that you will hereafter report, for their information, the removal or resignation of those officer, within ten days after the same may have taken place. You will also be pleased to report to the court the names of any individuals who may be hereafter nominated to these offices, agreeably to the same form, and within the same period after the nomination may have occurred.

The removal or resignation of serishtadar, pashkar and nazir to be communicated to the S. D. A. within ten days of its taking place, and the names of those appointed to succeed them.

*Return of the Names of the Serishtadar, Pashkar, and Nazir of the District of F.*

Name of the officer	Appointment held by him	When nominated and by whom	Age	Number of years in the public Service	Schedule of landed property possessed by him.	General remarks as to qualifications, &c.
A B	Serishtadar.	In 1825, by Mr C. D.	45	23	One Talook at a Jamma of 350 Rs. in Zillah E.	
	Pashkar					
	Nazir					

—*Cir. Ord. 20th Nov. 1840.*

Oath to be taken by certain of the native officers of the civil & criminal courts

11. The serishtadars, or other head Native officers, moonshees, mohurrirs, and nazirs of the Civil and Criminal courts, previous to entering upon the execution of the duties of their offices, are to take and subscribe the following oath in open court, before the Judge or Judges of the court to which they may be attached:—"I, A. B., appointed to the office of serishtadar (or other head officer, or moonshee, mohurrir, or nazir,) to the Dewanny adawlut of the zillah or city of ———, solemnly swear, that I will truly and faithfully perform the duties of the office to which I have been nominated, to the best of my knowledge and ability, that I will not receive, directly or indirectly, any present or muzz, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or muzz, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court, and that I will not derive, directly or indirectly, any advantages or emoluments from my office, excepting such as the orders of Government do or may authorize me to receive"—*Reg. 13, 1793, Sect. 4. —Benares Reg. 12, 1795.—Cal. and Cong. Prov. Reg. 12, 1803 Sect. 4.*

Solemn declaration substituted for the prescribed oath in such cases.

12. Instead of the prescribed oath, which is required by the Regulations in force the several Native officers referred to in the above clause, shall hereafter make and subscribe, in open court, or in the established public office, before the Judges or other European authorities to which they may be respectively subject a solemn declaration to the same effect with the form of oath heretofore prescribed, except that the word "declare" shall be substituted for "swear;" and that the declarer shall not be sworn thereto — *Reg. 18, 1817, Sect. 2, Cl. 2.*

By whom such declarations to be attested, and the above rule to be enforced.

13. The Judges, or other European officers, before whom such declarations are required to be made and subscribed, shall attest the same as publicly read and subscribed before them, in pursuance of the above clause and shall be careful to enforce a due observance of the rule therein contained, by the Native officers appointed to act under them respectively.—*Ibid. Cl. 3.*

To what native officers the rules so modified are meant to extend.

14. With the modification contained in the preceding section, the rules in force, which require that certain Native officers attached to the Civil and Criminal courts of judicature, and to other public offices, shall take and subscribe an oath, solemnly engaging to perform the duties of the office committed to them, faithfully and uprightly, according to the Regulations, are hereby declared to extend to the Native record-keepers and tehseeldars, or Native treasurers, of the Civil and Criminal courts, though not specifically named in Section 4, Regulation 12, 1793, and Section 9, Regulation 12, 1803; as well as to all other Native officers of Government holding any situation of trust and responsibility in the public service.—*Ibid. Sect. 3.*

Nothing in this regulation meant to preclude govt., or the S. D. and N. A. from ordering the removal

15. It is hereby further declared, that nothing in the present Regulation shall be construed to preclude the Governor General in Council, or the Courts of Sudder dewanny adawlut and Nizamut adawlut, from ordering the removal of a Native officer, upon just

and sufficient ground appearing for such order. Nor is any part of this Regulation meant to prevent the exercise of the general authority vested in the Courts of Sudder dewanny adawlut and Nizamut adawlut by the Regulations in force.—*Reg. 8. 1809, Sect. 13.*

of a native officer, or from the exercise of the general authority vested in the S. D. A. and N. A.

16. I am directed by the Court to request that whenever any of the ministerial officers attached to your court, receiving a salary of not less than ten rupees a month, may be dismissed from the public service for misconduct, a report of the same be submitted according to the annexed form, with a view to a register of their names being kept in this office, in conformity to orders recently received from the Honourable the Court of Directors

When a ministerial officer, receiving not less than 10rs. monthly is dismissed, a report according to a peculiar form to be sent for registry to the S. D. A.

*Ministerial Officers of the Civil Court of Zillah — dismissed from Office for misconduct.*

1	2	3	4	5	6
Name of the Employee	Name of his Father	Office held by him	Cause of Dismissal	Date of Dismissal	Remarks

—*Cir. Ord. 3th July 1842, par. 1.*

17. An extract from the register will be forwarded to you annually, to enable you to guard against the admission of improper persons into the public offices.—*Ibid, par. 2.*

Extract from registry will be sent to J. annually, to prevent the appointment of improper persons.

18. To guard against the possibility of dismissed officers obtaining service in other districts by change of names or other means of disguise, the Court are pleased to direct the addition of a column, containing a descriptive roll of the dismissed officer, to the form prescribed by their Circular order, No. 2455 of the 8th July last.—*Cir. Ord. 30th Dec. 1842, par. 1.*

To guard against dismissed officers getting into the service by any disguise, a descriptive roll of the dismissed officer to be inserted in report

19. The extracts from the register of public servants dismissed for misconduct, which may be sent to you from the office should be communicated to the several authorities of the district, so as to make the registers of each department available to the heads of the other departments.—*Ibid, par. 2.*

Extracts from register of dismissed officers to be communicated by J. to the other public authorities of the district

20. The Sudder dewanny adawlut have had before them your senior Judge's letter, under date the 29th ultimo, on a general question regarding the removal of ministerial Native officers of the provincial courts, and particularly adverting to the cases of Buncharam and Ramsoonder, *serishtadar* and *parshkar* of the Moorshedabad court. 2. The Sudder dewanny adawlut do not undertake to give you instructions how to act in these cases, which must be left to your discretion; but direct me to offer the following observations. 3. Under the provisions of Regulation 8, 1809, Section 3, the power of removing their own ministerial Native officers is vested in the provincial courts; by which is implied the power of removal on such grounds as the Regulations declare sufficient for such a measure. 4. The fifth clause of Section 5, contains a general declaration with regard to all Native officers, and must, in the opinion of the Court, be considered to include ministerial officers of the provincial courts, and that they shall be removable, without proof to any specific act of misconduct, whenever there shall be sufficient reason to deem them incapable, or in any respect unworthy of public confidence. 5. If Moonshen Ramsoonder cannot give a reasonable account of his possessing so much more property than the lawful emoluments of his office seem to authorize, the Court would deem the fact of his possessing that property a sufficient ground for presuming him a person unfit for public confidence. 6. With regard to the stated incapacity of the *serishtadar*, if this be the conclusion of the Provincial

Ministerial officers removable without proof of special act of misconduct, when they appear incapable, or unworthy of public confidence. The inability of an officer to give a reasonable account of his possessing more property than the lawful emoluments of his office would authorize, a sufficient ground for presuming him to be unworthy of confidence



court, from the present mode in which the duties of his office are performed, it is a ground recognized by the Regulations as sufficient for removing him.—*Con.* 306, 3d Sept. 1819.

Heavy fines of N officers to be avoided, when they refuse to do their duty, the office should be transferred to another

21. *Extract from a Despatch from the Honourable the Court of Directors, dated the 11th February, 1840*—"We have on former occasions expressed our strong objection to the imposition of heavy fines upon Native servants, as involving them in pecuniary difficulty, and inducing them to resort to improper practices for the purpose of indemnification. It appears to us that the preferable course is, when an officer refuses to do that which his official duty requires of him, to transfer at once the office to a more obedient holder."—*Cir. Ord* 7th Aug. 1840.

Description of the duties to be performed by the head clerk of the zillah judge's establishment

22. The Court publish the following rule, determined on by the Courts of Sudder dewanny and Nizamut adawlut of the Lower and Western Provinces in concert with the sanction of Government, for devolving on the head clerk of the zillah Judge's establishment certain unimportant duties hitherto performed by the Judge, with a view to the relief of the latter officer. 2. The Judges are empowered, at their discretion, to employ their head clerk in the following duties: Attesting copies of decrees and other documents granted to parties on stamped or plain paper under the Judge's orders. Attesting copies of proceedings sent to the local authorities and to other districts under the Judge's orders. Registering in English the muskardama mahs, and preparing them for the Judge's attestation. As a mental precaution against error and abuse, it is, at the same time, ordered that the head clerk when entrusted with such duties at the discretion of the Judge, is never to attach his signature to any document without its correctness having been previously attested and certified by the head ministerial Native officer of the Judge's court.—*Cir. Ord* 25th Aug. 1841.

Rate of travelling allowance for ministerial officers

23. With reference to your predecessor's letter, No. 565, of the 19th April, 1844, I am directed to state, for the information of the Sudder Court, that the Government have been pleased, in modification of the orders of 29th August, 1839, to authorize travelling allowances to ministerial officers, when required to accompany their superiors by dawk at the rate of four annas per mile, and during halts at the rate authorized by the above orders, viz. 3 10ths of their respective salaries. In other respects the orders of 29th August, 1839, are to continue in force.—*Cir. Ord* 15th Aug. 1845.

Giving bribes to a public officer is punishable as a misdemeanor

24. The Court of Nizamut adawlut have had before them your letter, dated the 25th ultimo, requesting their opinion as to whether a Native, giving bribes to the *ambah* of a puidah officer for corrupt purposes, is liable to be prosecuted for so doing. In reply, I am desired to acquaint you that the act in question is clearly a misdemeanor, both according to the English and Mahomedan Law, and, though not specifically mentioned in the Regulations the individual committing it is unquestionably liable to a criminal prosecution.—*Con.* 522, 4th Sept. 1829.

Office of judge's treasurer abolished

25. The office of Judge's treasurer is abolished by the Circular order of the 28th May, 1847.

## SECTION II

### *Purchase or possession of Landed Property by the Ministerial Officers of the Zillah and City Courts*

Native officers of the courts will report on the 1st of January

26. The Vice-President in Council doubts, whether the considerations which led to the adoption of the rule for precluding the Native officers of the revenue department from purchas-

ing lands at the public sales, can be considered applicable to the Native officers of the judicial department: His Excellency in Council is not consequently prepared to extend that restriction to the latter class of officers.—He is at the same time satisfied of the expediency of guarding, as far as possible, against the exercise of undue influence in the management of lands required by them. With this view, His Excellency in Council has been pleased to resolve, that the Native officers attached to the Provincial courts of appeal and circuit, and to the cutcherries of the zillah and city Judges and Magistrates report, on receipt of the present orders, and again on the 1st January in each year, the lands both malgozaree and lakhiraj, which may be held by them respectively, in whatever part of the country such lands may be situated; and that the provincial, zillah and city Judges furnish the Collectors of the districts, in which the lands may lie with the information so obtained from their Native officers.—*Civ. Ord. 25th July 1811, par. 3.*

each year, the lands malgozaree and lakhiraj held by them in any part of the country; the information thus given to be furnished by the judges to the collectors.

27. With the view of better giving effect to the present orders of Government, the Vice-President in Council desires that the Collectors subject to your authority may be directed to inform the Provincial, Zillah, and City courts, whenever it may come to their knowledge, that any of the officers attached to their courts held lands, which have not been duly reported. — *Ibid, par. 4.*

The collectors will give information to the judges, when they learn that the N. officers of their courts hold lands not reported.

28. It does not appear to Government to be necessary to establish any legislative provision with respect to cases of the above nature, as the Native officers of the judicial department will, of course, be liable to dismissal, should they in any instance fail to furnish the information required respecting lands held by them, so commit any abuse in the management of them. — *Ibid,*

N. officers liable to dismissal, if they fail to furnish the information, or commit any abuse in the management of the lands.

29. The said orders are not to be considered applicable to the law officers, as well as the judicial officers of the Courts of justice. — *Ibid par. 6.*

These orders applicable to law officers.

30. A question having arisen with respect to the extent of the operation of the resolutions of Government, passed on the 9th ultimo, (*as above*) regarding lands held by the Native officers attached to the Civil and Criminal courts, I am directed by the Courts of Sudder dewanny and Nizamut adawlat to acquaint you, and to desire that you will acquaint the several Judges and Magistrates within your division, that the Court consider those resolutions, as intended to include all lands held by the Native officers of the Civil and Criminal courts, (including the Police officers,) whether in property or in farm, or under any other tenure whatever. — I am further directed to acquaint you, that the Court deem it expedient to extend the orders in question to the vakeels employed in the several Civil courts. — *Civ. Ord. 15th Aug. 1811.*

These rules include all lands held by N. officers whether in property or in farm, or under any tenure, and they are extended to the vakeels.

31. In future, on the appointment of any Native officer on your establishment, whether the situation to which he may be nominated be of a judicial or ministerial nature, or connected with the Police department, you will require from him a schedule of any landed property of which he may at the time be possessed, and at the same time explain to him that should he subsequently make further acquisitions of the same description, it will be incumbent on him to communicate the circumstance to you within one month from the date of the acquisition; should he fail to do so, or should it appear that he has wilfully omitted in his schedule any landed property belonging to him at the time of filing it, he will be liable to dismissal from office. — *Civ. Ord. Cal. and West. C. 27th Feb. 1835, par. 2.*

Every N. officer on his appointment will furnish a schedule of his landed property, and communicate the fact of future acquisitions within one month, on pain of dismissal.

32. All such schedules, which may be filed in your court, you will immediately transmit to the office of the Collector of the district for record. — *Ibid, par. 3.*

These schedules will be filed, and then transmitted for record to the collector.

This rule applicable to the existing incumbents.

33. You will also consider the above rule applicable to present incumbents, and will accordingly call on the officers now attached to your establishment to file a similar schedule, explaining to them the nature of the penalty attached to wilful concealment.—*Ibid*, par. 4.

Re-enforcement of this rule by the S D A

34. Some of the Native Judges having been represented to be large landholders in the districts in which they are employed, the Court have determined to ascertain how far the rules contained in the Circular order, No. 135, 27th February, 1835, have been enforced. They request, with that view, that you will forward to this office, a copy of the schedules which may, in pursuance of that circular, have been filed in the Collector's office, by the uncovenanted Judges of your district, including those who may have been transferred to other districts within the last year and at the same time notice whether you have reason to believe that the schedules are in any instance incomplete.—*Cir. Ord. 15th April 1842, par. 1.*

Any officer who has failed to furnish the schedule will explain the circumstance and furnish one without delay

35. Should any of the Native Judges have failed to comply with the rules of the Circular order above cited, you will call upon such officer for an explanation of the circumstance, and direct them now to furnish you with the required schedule, together with a statement of the dates of acquisition of such estates as may not have descended to them.—*Ibid*, par. 2.

These orders have reference to officers receiving more than 20 rupees monthly

36. The foregoing orders are also to be acted upon with regard to the ministerial officers now attached to your court, whose salaries exceed 20 rupees per month, to whom the Circular No. 135, is equally applicable.—*Ibid*, par. 3.

Such schedule not required from officers receiving less than 20 rupees monthly

37. In continuation of the Court's Circular of the 27th February, I am directed to inform you, that the schedule of property therein mentioned need not be required from any Native officer who receives a salary of less than 20 rupees per mensem.—*Cir. Ord. West. C. 10th April, Cal. C. 4th Sept 1837*

The schedule will include land of every description and by whatever tenure held by the officer

38. In continuation of the Circular order of the 27th February last, the Court hereby direct that the schedule required by that Circular order shall include not only land, the proprietary right of which may be vested in the public officer to whom it may relate, but any land or other real property, whatever may be the nature of the tenure by which he may hold it, the description of tenure being also recorded in the schedule. 2. (*Western Provinces*.) These schedules will be registered in the office of the Collector of the Zillah in which the officer may be employed, and copies of the same sent to the Collectors in whose Zillahs the property therein included may be situated. 2. (*Lower Provinces*.) The schedule will be registered in the office to which the individual giving it in may be subordinate; and copies will be sent to the Collectors in whose districts the property specified may be situated.—*Cir. Ord. West. C. 29th May, Cal. C. 3rd July 1835.*

The places where these schedules are to be registered, are the N. West, and in Bengal.

### SECTION III.

#### *Civil Actions against Ministerial Officers of the Zillah Courts for corruption, extortion, or embezzlement.*

Ministerial officers of the courts amenable to their respective courts for corruption & extortion.

39. The ministerial officers of the Civil and Criminal courts, and all Native officers attached to the courts, excepting the law officers, are declared amenable to the courts to which they may be respectively attached, for acts of corruption or extortion; and the courts are empowered to receive any such charge that may be preferred against them. Previous however to receiving the charge, the courts are to require the complainant to make

Oath or declaration to be made, and security to be given

oath to the truth of it. (or subscribe the required declaration, if he shall come within the description of persons whom the courts are empowered to exempt from taking oaths.) and give security in whatever sum they may judge proper, to prosecute the charge without delay. Unless the complainant shall previously take the oath, or subscribe the above mentioned declaration, and give the required security, the courts are not to receive the charge.

—*Reg. 13, 1793, Sect. 9, Cl. 1.—Benares Reg. 12, 1795.—Ced. and Cong. Prov. Reg. 12, 1803, Sect. 12, Cl. 1.*

by the complainant before the court receiving the charge

Charge to be rejected unless the complainant shall make the required oath or declaration, and give security.

10. The provisions of Regulations 13, 1793 ; 12, 1795, and 12, 1803, whereby parties injured have the option of instituting a civil action, in cases of corruption or extortion, are not considered as precluding a criminal prosecution whenever there appear sufficient grounds for it. The prosecution should be public and conducted by the vakeels of Government. *Con. 54, 21st Nov. 1809.*

*Regs. 13, 1793, 12, 1795, and 12, 1803 do not preclude a criminal prosecution for corruption if there are sufficient grounds for it.*

11. The Sudder dewanny adawlut is empowered to receive charges of corruption or extortion, not relating to any matter depending before them, or decided by them, that may be preferred to them against any ministerial officer of a Zillah or a City court, and to order the court to which the accused may be attached, by a precept under their seal, and attested by their Register, to receive the charge, provided the complainant shall prove to their satisfaction, that he preferred the charge in the first instance to such Zillah or City court, and offered to make the required oath or declaration, and give the security prescribed in Clause first, and that the court notwithstanding omitted or refused to receive the charge, and shall moreover make the required oath or declaration, and enter into the security prescribed in the above mentioned clause.—*Reg. 13, 1793, Sect. 9, Cl. 3. —Benares Reg. 12, 1795.—Ced. and Cong. Prov. Reg. 12, 1803, Sect. 12, Cl. 3.*

Cases in which the S. D. A. is empowered to receive charges of corruption or extortion against the ministerial officers of any Zillah or City court.

How the court is to proceed if the charge relate not to any matter depending before it, or which may have been decided by it

12. But if any person shall charge a ministerial officer of any Zillah or City court, before the Sudder dewanny adawlut, with corruption or extortion in any suit or matter that may be depending before it, or which may have been decided by it, the court may receive the charge, and refer it for trial to the Zillah or City court to which the offender may be attached, without further enquiry, provided the complainant shall previously make the prescribed oath or declaration to the truth of the charge, and give the security required in clause first.—*Ibid.*

Court how to proceed, if the charge relate to any matter depending before it, or which may have been decided by it

13. Charges of corruption or extortion that may be preferred against the ministerial officers of any Civil or Criminal court of judicature under this section, are to be considered as civil actions, and accordingly, are to be prosecuted in the Civil courts. Conformably to this rule, whenever any Zillah or City court may receive any such charge against their ministerial officers, or any such charge may be referred to them by the Sudder dewanny adawlut, or the Provincial court of appeal, they are to direct the complainant to prosecute the charge in the Dewanny adawlut.—*Reg. 13, 1793, Sect. 9, Cl. 7.—Benares Reg. 12, 1795.—Ced. and Cong. Prov. Reg. 12, 1803, Sect. 12, Cl. 3.*

In what cases charges of corruption or extortion, preferred against any ministerial officer of a court, are to be tried

14. Whenever any Native ministerial officer, of any Civil or Criminal court, or any Hindoo or Mahomedan Law Officer, against whom an action may have been brought in the Civil court, to recover money or property, extorted or corruptly taken,

No fine to be awarded in the civil court, for the offence of corruption or extortion.

shall be proved to have received or taken the whole, or any part of the money or property which he may be charged with having received or taken, the court is to adjudge him to refund the amount of the money, or value of the property, which he may be proved to have so received or taken, with interest, when it may be a case of money taken, at such rate not exceeding twelve per cent. per annum, as to the court may appear equitable, and to pay full costs to the plaintiff in the suit. The court shall not, in such case, be competent to award any fine against the defendant.—*Reg.* 3, 1827, *Sect.* 3.

Judgment to be passed by the court, in the event of a charge of corruption or extortion being proved in whole or in part against any non-tenal officer

45. In enforcing the decision, the court is to observe the rules prescribed for enforcing other decisions of the court. If the officer against whom such decree may be passed, shall not appeal from it within the limited time, or, if an appeal shall not lie from the decision, the court is to transmit a copy of the decree to the Governor General in Council. If an appeal shall lie from the decision, and such officer shall prefer an appeal and the decision shall be confirmed in appeal, the court by which the final decision may be passed, is to transmit a copy of it to the Governor General in Council, who reserves to himself the power of declaring such officer incapable of serving Government in any capacity. The courts may suspend a Native officer against whom a charge of corruption or extortion may be preferred, until the final decision may be passed, if they shall see cause for so doing.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 8.—*Benares Reg.* 12, 1795.—*Ced. and Cong. Proc. Reg.* 3, 1803, *Sect.* 12, *Cl.* 8.

Officers at liberty to prosecute persons preferring groundless charges against them under this section

46. If any person shall prefer a charge of corruption or extortion, against a ministerial officer of any Civil or Criminal court of judicature under this section, and the charge shall not be proved, the accused is to have the option of suing the accuser for damages in any Court of civil judicature to which he may be amenable.—*Reg.* 13, 1793, *Sect.* 9, *Cl.* 12.—*Benares Reg.* 12, 1795.—*Ced. and Cong. Proc. Reg.* 12, 1803, *Sect.* 12, *Cl.* 12

Record of criminal conviction sufficient for compelling the refund of property corruptly taken or extorted

47. From and after the date of this Regulation, it shall not be necessary for any party from whom money or property may have been corruptly taken or extorted, to institute a civil action for the recovery thereof, but on proof of the charge, in a criminal prosecution, for those offences, a certified copy of the conviction by a Court of circuit, or the Nizamut Adawlut, shall be received as sufficient authority for enforcing the refund of the amount or value so taken with interest, on application to that effect being preferred by the aggrieved party, to the Civil court, on the stamp paper prescribed for miscellaneous petitions.—*Reg.* 3, 1827, *Sect.* 5.

A suit to recover from the serishtadar of a collector, money alleged to have been taken as a bribe, must be treated as a common action for debt

48. I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, requesting to be informed what mode of procedure you should adopt in receiving and trying two suits instituted for the recovery of sums said to have been taken as bribes by the serishtadar of the Collector's office.—In reply, I am directed to inform you, that you should proceed in the same manner as in common actions for debt. Section 7, Regulation 3, 1793, declares all Natives amenable to the Civil courts, and as no Regulation exempts the officers of Collectors from their jurisdiction, they come within the intent of the rule—*Con.* 807, *Cal. C. 2d Aug., West. C. 6th Sept.* 1833.

## SECTION IV.

*Criminal Prosecution against the Ministerial Officers of the Zillah and City Courts, for Corruption, Extortion or Embezzlement.*

49. In explanation of the provisions for a civil action against the law officers and ministerial Native officers of the Courts of judicature, contained in Regulations 12 and 13, 1793, (extended to Benares by Regulations 11 and 12, 1795; and re-enacted for the Upper provinces by Regulations 11 and 12, 1803,) it is hereby declared that those provisions, the principal object of which is to enable individuals, who may be aggrieved by any of the Native officers in question, to obtain redress by an action in the Civil courts, are not meant to preclude a criminal prosecution in cases of corruption, extortion or embezzlement, which may appear to call for exemplary punishment—*Reg. 18, 1817, Sect. 6, Cl. 1.*

Explanation of provisions in force for a civil action against the law officers and ministerial N. officers of the courts of judicature, in cases of alleged corruption or extortion.

50. Whenever a law officer, or ministerial Native officer, may not, by the result of a civil action, have been subjected to the penalties for corruption, or extortion, provided for in the above Regulations, and there may appear to be sufficient grounds for a criminal prosecution against any such officer, on a charge of corruption, extortion or embezzlement, he is hereby declared liable to a criminal prosecution before the zillah or city Magistrate, and Court of circuit, as provided for in other cases of misdemeanor by the Regulations, and on conviction before a Court of circuit, or the Court of Nizamut adawlut, he shall be subject to discretionary punishment to the extent, and under the provisions, stated in Section 3, Regulation 2, 1813, with respect to Native officers convicted of making use of the public money entrusted to their care.—*Ibid, Cl. 2.*

In what cases a law officer, or ministerial N. officer, may be prosecuted in the criminal court on a charge of corruption, extortion, or embezzlement.

And to what penalties liable on conviction

51. Section 4 of the Regulation abovementioned, directing a report of convictions and sentences to the Governor General in Council, for the purpose of enabling him to determine whether the guilty persons should be declared incapable of again serving Government, shall also be considered applicable to any convictions and sentences under the present section.—*Ibid, Cl. 3.*

Report to be made to govt in such cases

[The above enactment is <sup>illustrated</sup> by the following rule.]

52. Any law officer or ministerial Native officer, charged with corruption or extortion, against whom there may appear to be sufficient grounds for a criminal prosecution, shall be liable to such prosecution, as laid down in clause second, Section 6, Regulation 18, 1817, whether the civil action provided for in Section 3 of this Regulation, shall have been brought or not, and whatever, if brought, may have been its result.—*Reg. 3, 1827, Sect. 4.*

Crim. prosecution not to depend on the civil action, or its result

53. The Court are of opinion, that a Magistrate is competent to pass final sentences of punishment on conviction of such offences to the extent of the powers vested in him by the Regulations, when such punishment may appear to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused. If otherwise, it would of course be necessary to commit the prisoner for trial before the Court of circuit—*Con. 237, 16th Feb. 1816.*

The magistrate may sentence for bribery or extortion, to the extent of his powers, if the punishment appears adequate, else he must commit the offender to sessions.

The commitment of a N officer of the civil court for embezzlement, should be made by the magistrate and not by the judge.

54. The Court of Nizamut adawlut have had before them your letter, dated the 14th ultimo, with its Persian enclosures and copy of the correspondence which has passed between yourself and the acting Magistrate of Allahabad in the case of Rummun Lal, charged with the embezzlement of public money. In reply, I am directed to communicate to you the opinion of the Court, that your instructions to the acting Magistrate were correct and proper; that under the circumstances of this case the acting Magistrate would have evinced a much sounder judgment had he awaited the result of the acting Judge's reference to this Court; and that Clause 2, Section 11, Regulation 17, 1817, cited by him in justification of his proceeding, is not applicable that rule applying only to cases of perjuries committed by parties in a civil suit actually pending before a judicial authority. I am directed to add, that by my letter written to the late acting Judge on the 27th of March last, instructing him to commit Rummun Lal and the other individuals implicated to take their trial before the Commissioner of Circuit for the Division on the charge of fabrication or embezzlement, or on both of those charges, should it appear to him from the proceedings already held, that there was sufficient evidence on which to found their conviction, it was intended that Mr Brown should have recourse to this proceeding in his capacity of acting Magistrate and not in his judicial capacity.—*Con. 518, 7th Aug. 1829.*

Embezzlement is a bailable offence.

55. Embezzlement is a bailable offence, and a person charged with that offence should have the option of giving bail and obtaining his enlargement from restraint.—*Con. 1238, West. C. 19th July, Cal. C 16th Aug. 1839.*

## SECTION V.

### *Summary Proceeding for recovering Embezzlements of Money and for compelling the delivery of Papers by the Native Ministerial Officers of the Zillah and City Courts and other Offices.*

A summary enquiry to be instituted in such cases by the Judge or Judges of the court.

56. Whenever any Native officer attached to a Civil or Criminal court may be charged with having embezzled any money or other property paid into, or deposited in the Court to which he is attached; or received by him in his official capacity, in execution of a decree, or on account of a deposit, or on any other account whatever; or whenever the Judge or Judges of a Civil or Criminal court may have reason to suspect any such embezzlement, on the part of a Native officer attached to the court they shall immediately institute a summary inquiry to ascertain the truth of such charge or suspicions; and shall, at the same time, require the Native officer accused, or suspected, to give sufficient security for his attendance during the enquiry.—In the event of such security not being given, and of its appearing necessary to keep the officer in custody, pending the enquiry, it shall be competent to the Judge or Judges to order the same, and to keep the party in custody of peons, or to confine him in the jail of the Dowanny adawlut, until he shall give the required security, or his detention appear no longer necessary.—*Reg. 18, 1817, Sect. 7, Cl. 2.*

Security to be required for the attendance of the N officer

Or the officer to be kept in custody

On proof of embezzlement, the amount how to be recovered.

57. When the summary enquiry has been completed, if it be established thereby that any money or other property has been embezzled by the person accused, or suspected, in his official capacity, he shall be required to pay the same into court, within such

time as may be limited for that purpose; and on his failure to comply with such requisition, it shall be recoverable from him, as well as from his surety, if he have given security on account of the office held by him, by the usual process of recovery, in execution of judgments of the Civil courts.—*Ibid*, Cl. 3.

58. I have the honor to acknowledge the receipt of your letter of the 7th ultimo, and, in reply beg leave to state for the information of the Court, that a summary sentence, in strict conformity with Regulation 18, 1817, adjudging the particular sums recoverable from the late treasurer Rammohun Mozoomdar, has not been passed by me; although the fullest inquiry has been made, and the sums due from him have been ascertained, as stated in my letter to your address, with enclosures, dated the 20th October last.—2 I enclose copies of two *roobukarees*, dated the 24th October and 16th November last, which will shew the nature of the proceedings I deemed it proper to hold in the Civil court in this case. It will be observed, that on the commitment of Rammohun Mozoomdar for trial to the Court of circuit, considering the sums specified in my proceedings as due from the treasurer to have been sufficiently ascertained, (for he even does not deny that these sums are due,) I proceeded to recover the amount in the manner prescribed for the execution of decrees.—3 Having however omitted to pass a summary decree in strict conformity with the Regulation, I request to be favored with the Court's instructions, whether, with reference to the proceedings already held by me, such a course is still necessary. It does not appear to me to be too late to pass a summary decree, which would have the effect of sanctioning the measures that have been adopted to recover the balance.—*Reply*—I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of a letter from you, dated the 18th instant, together with its enclosures and in reply to desire, that you will now proceed, in conformity with Regulation 18, 1817, to hold a summary enquiry relative to the embezzlements of the late treasurer of your court, Rammohun Mozoomdar, and to pass a summary decree, (adjudging the particular sum recoverable from him) according to the rule laid down in the Regulation above quoted.—*Con.* 334, 29th Dec. 1820.

The summary decree prescribed by reg 18, sec 7, adjudging the exact sum recoverable, must be passed before the J can realize the amount embezzled by a N. officer

59. A similar mode of proceeding shall be observed when a Native officer attached to any Civil or Criminal court of judicature, may withhold any public accounts which it is his duty to prepare and furnish, and the summary judgment in such cases, shall not only order the immediate delivery of the accounts withheld, but shall also impose such fine to Government as may appear just and proper, on consideration of all the circumstances of the case, and the situation of the party. *Reg.* 18, 1817, *Sect.* 7, Cl. 4.

The same course as in sec 40 be pursued when public accounts may be withheld by N. officers

60. Any person dissatisfied with the judgment of a Zillah or City court, given under the provisions of this section, shall be at liberty to prefer a summary appeal thereupon under the rules applicable to such appeals, to the Provincial court of the division: and provided sufficient security be given for performing the decree of the Provincial court on the appeal, the decision of the Zillah or City court shall not be carried into execution till confirmed by the Provincial court.—*Ibid*, Cl. 5.

A summary appeal may be admitted by the prov. ct from decisions passed in such cases by the zillah & city judges

*The appeal of course now lies to the Sudder.*

61. I am desired to state that in the opinion of the Court a Sessions Judge is not competent to try a person committed for trial by himself in his capacity of Civil Judge. The Court also direct me to inform you, that although a summary enquiry into cases

Sessions J cannot try a commitment made by himself as civil J. The judge may make a summary



energy into cases of embezzlement by Native officers, but he cannot commit for the offence, that duty is left to the magistrate who will act on his own discretion, the judge should submit his proceedings to the magistrate

Amount of embezzlement to be paid, in the first instance, from the public treasury

of embezzlement by ministerial-Native officers may be conducted by the Judge under the provisions of Section 7, Regulation 18, 1817, that officer is by no enactment empowered to commit for trial before the Commissioner of Circuit for the offence; this duty being left to the Magistrate, to whom the Judge should transmit his proceedings, if grounds appear to exist for subjecting the accused to a criminal trial; the Magistrate however, in committing or releasing the person charged with the offence, will act on his own judgment on a fair consideration of the evidence adduced.—*Con. 691, Hist. C. 11th May, Cal. C. 1st June 1832.*

62. Whenever it may be established by the process described in Section 7. Regulation 18, 1817, that any Native officer attached to a Civil or Criminal court may have embezzled any money or other property, duly paid into or deposited in the court to which he is attached: or regularly received by him in his official capacity, in execution of a decree, or on account of a deposit, or on any other account whatever, it shall be the duty of the European controlling authority to refund to the party or parties, whose property may have been so embezzled, the amount or value of the embezzlement from the public treasury, in the first instance, without reference to the solvency or otherwise of the defaulter or his surety: the Government reserving to itself the right of adopting such measures for the recovery of the money so refunded, as may be deemed expedient, with reference to the nature and circumstances of each case. — *Reg. 3, 1827, Sect. 6.*

A conviction of surreptitiously obtaining and corruptly appropriating money deposited in court, cannot authorize the summary process of recovery prescribed in reg 18, 1817, see 7, cl 3, & 3, 1827, sec 6

63. Held by the Sudder dewanny adawlut that a conviction of "surreptitiously obtaining" and "corruptly appropriating" money deposited in court, against a ministerial officer, is insufficient to authorize the enforcement of the summary process for recovery, prescribed by Clause 3, Section 7, Regulation 18, 1817, and Section 6, Regulation 3, 1827 — *Rep. Sum. Cases, 9th Aug 1842, p. 36*

Native officers can be compelled to deliver up the public records only under the general provisions of reg 3, 1793, sec 31

64. There being no specific provision in the Regulations for compelling Native officers of Government in the judicial department to deliver over charge of the records of their office, such cases fall within the general provision of Section 21, Regulation 3, 1793.—*Con. 176. 3d Aug 1811.*

## SECTION VI.

### *Prosecution and Conviction of Native Officers for making use of Public Money entrusted to their care.*

Kazanchies, tehseeldars and other Native officers entrusted with the charge of public money, prohibited from making use of such money for their own advantage, or that of any other individual.

65. Kazanchies, tehseeldars, and other Native officers entrusted with the charge of public money, are hereby strictly prohibited from making use of such money for their own advantage, or that of any other individual.—*Reg. 2, 1813, Sect. 2.*

Persons infringing the rule contained in sec 2 of the present reg, to be deemed guilty of a misdemeanor, and to be

66. Any person infringing the rule contained in the foregoing section, shall be deemed to have been guilty of a misdemeanor, and shall be punished, on conviction thereof, before a Court of circuit, at the discretion of the said court, under the authority vest-

ed in the Courts of circuit, by clause seventh, Section 2, Regulation 53, 1803, in cases liable to discretionary punishment: provided, nevertheless, that no person convicted of the offence specified in the preceding section of this Regulation shall be sentenced by a Judge of circuit, to the punishment of stripes or to hard labor. If in any instance imprisonment for the term of seven years shall appear to the Judge of circuit to be an inadequate punishment for the offence, he shall transmit the trial, with his sentiments thereupon, to the Court of Nizamut adawlut, for the final sentence of that Court.—*Ibid*, Sect. 3.

punished on conviction accordingly. But shall not be sentenced by a J. of circuit to the punishment of stripes, or hard labor.

Trial to be submitted for the final sentence of the N. A. in certain cases.

67. It shall be the duty of the Board of Revenue, the Board of Commissioners, and the Board of Trade, to submit to Government, a special report respecting all convictions and sentences, which may take place under the provisions of the present Regulation, in order that the Governor General in Council may have an opportunity of considering whether the guilty persons should not also be declared incapable of again serving Government in any public capacity.—*Ibid*, Sect. 4.

The bd. of rev, the bd. of com and the bd. of trade to submit special reports of all convictions and sentences under the reg. to govt, who will determine whether the guilty persons should be declared incapable of again serving govt

68. The Court do not understand the Regulation (2, 1813,) cited by you as intending a repeal of the Muzimlan law relative to the offence of embezzlement, which, being punishable under that law, may lawfully be committed for trial to the Court of circuit.—*Con* 543, 2d April 1830.

Embezzlement is punishable under the Muzimlan law, and the offence may be committed to the sessions

69. The case of a peon on the establishment of a Government functionary, making away with money entrusted to or collected by him, does not come within the meaning of Regulation 2, 1813. Such offence must be considered as a misdemeanor punishable under the general regulations.—*Con* 1200, *Cal. C.* 18th Jan., *West. C.* 1st Feb. 1839.

A public peon making away with money entrusted to or collected by him is a misdemeanor punishable under the general reg.

## SECTION VII

### *Security from Native Ministerial Officers entrusted with Property—defaulting Treasurers.*

70. The Court observe that security should be taken from treasurers, nazirs, and other officers, who, in the discharge of their public duty, have charge of money or property, whether public or belonging to private individuals, and that the sureties should bind themselves to make good all losses sustained by the default or fraud of the officer for whom they are bound. With regard to the amount of property to be pledged by the surety, and entered in the schedule at the foot of the bond, the Court observe that it must be regulated according to the circumstances of each case, and the amount or value of the money or property which may be likely to be left in the hands of the officer from whom the security is required: and that the surety should bind himself not to sell, or in other manner alienate the property in question until he be relieved from his responsibility.—*Cir. Ord.* 23d Sept. 1831, *par.* 2.

Security to be taken from treasurers, nazirs and other officers, its amount will be regulated by circumstances. The security must bind himself not to alienate the property pledged.

71. The Court desire, that in taking security in future you will follow this principle, and be particularly careful to ascertain the sufficiency of the security. They also direct that you will cause the efficiency of the security of the officers on your establishment, who are required to furnish it, to be carefully revised during the last week in December of each year; and that you will submit a report of the result of the revision according to the accompanying form.

The sufficiency of the security to be carefully ascertained and annually revised, and reported on

REPORT of the result of the enquiry as to the sufficiency of the security given by the Officers of the ——— Court ———, made in the month of December, 1831, under the Circular Order of Sudder Dewanny and Nizamut Adawlut, dated the 23rd Sept. 1831.

Name and designation of the officer required to give security	Amount of security required	Names of the sureties, with the date of their engagement.	Names of new security, the old sureties having been charged	Remarks

—*Ibid*, par. 3.

Further instructions regarding the revision of securities

72. The officers who are required to report on the securities of their subordinates, omitted generally to submit their report with punctuality, and very few have given any distinct opinion as to their validity or otherwise. The Court desire that they be called upon to submit the report of the revision of the securities, (required to be made by the Circular order of the 23rd September 1831,) on or before the 1st February 1835, and that they insert at the foot of the form prescribed by that Circular (which, for the convenience of record, should be uniformly engrossed on a sheet of foolscap paper) the following certificate:—"Certified, that I have revised the securities of the officers above mentioned, and that I consider them good and sufficient." (Signed) A. B. Judge or Magistrate" (as the case may be).—*Cir. Ord. Cal. C. 16th Dec. 1836. West. C. 20th Jan. 1837.*

It the inferior officers neglect this indispensable duty they will be reported to Government

73. The attention of the inferior officers will be called to the Circular order of the 3d July, 1835, and they will be advised that should they neglect to furnish the indispensable information, and any embezzlement take place, their conduct must be reported to Government.—*Ibid*, par. 5.

When the officers concur for the sufficiency of the security, he becomes responsible for the safety of the public funds committed to his ministerial officers, and will be accountable for any insufficiency which may be discovered.

74. The object of the Honourable the Court of Directors will be sufficiently attained, if the Court satisfy themselves, namely, that the officers subject to their jurisdiction have severally instituted the necessary enquiries to establish the validity of the security furnished by those of their subordinates who hold situations of permanent responsibility. But it should be distinctly explained to all the functionaries who are required to furnish this annual report, that when they vouch for the sufficiency of the security in each case, they thereby render themselves responsible for the safety of the public funds committed to the charge of their ministerial officers, and that they will be held accountable for any insufficiency of security which may subsequently be experienced.—*Extract of a letter from the Government of Bengal to the Sudder Court. Cir. Ord. Cal. and West. C. 3d July 1835.*

The judges & heads of offices responsible for the conduct of their Native officers

75. The zillah Judges and Magistrates, and the heads of offices generally, cannot be too distinctly apprized, that they must be held responsible for the conduct of their Native officers. Individuals of that class may no doubt, in particular instances, commit offences which may escape detection, but general and long protracted abuse must be referred to supineness and want of vigilance on the part of their European superiors.—*Cir. Ord. 2d Oct. 1817, par. 5.*

All security bonds executed by the securities of treasurers, nazirs, and others will

76. With reference to the provisions of Act I. of 1843, which enacts that henceforward all registered documents shall take precedence of others not so attested, the Court conceive that a due regard to the security of the interests of Government requires that all security bonds

executed by the securities of treasurers, nazirs, and other ministerial officers, attached to the judicial courts, should be duly registered in conformity to the conditions of the enactment cited; and are accordingly pleased to direct, that all such, and other documents likewise of a similar character, by the annulment or repudiation of which the interests of Government are liable to be injuriously affected, shall be subjected to registry; that the civil and criminal authorities in the lower provinces shall satisfy themselves that the lands to which the registered security deeds relate have not been already conveyed away by any previously registered deeds, and that such registration and scrutiny shall be deemed an indispensable preliminary to their acceptance as good and valid engagements. The fees attendant on this process, must be defrayed by those, from whom security is demanded, and whose tenure of office is dependant on their compliance with such requisition — *Civ. Ord. 2d May 1813, par. 1*

be registered, and the civil judges will ascertain that the lands referred to have not been conveyed away by a previously registered deed.

By whom the fees of registration are to be paid

As the validity of deeds, bonds and documents of every description, executed previously to the passing of this enactment, is not affected by its provisions, the registration of such need not be insisted on. These instructions are intended to have prospective effect only.

These instructions have a prospective effect.

—*Ibid.* par. 2.

78. Sureties of a treasurer of a Zillah court held to be responsible for delinquencies and embezzlements made during the period they had guaranteed the faithful and honest administration of his office by the treasurer, notwithstanding his acquittal from all liability granted by the Zillah court. — *Rep. Sum. Cases, 19th Dec. 1821, p. 6*

Sureties of the treasurer of a Zillah court responsible for delinquencies, & these sureties acquitted from liability by Zillah court

79. In cases provided for by Section 16, and 19 Regulation of 1801 the Judge, on the application of the Collector for the confinement of a collector, richabdar, or other Native officer, cannot proceed in any other manner than according to the provisions of the enactments cited, i.e. confine the defaulter until he pay the sum or give up the paper demanded from him, or furnish security to institute a suit to compel him to do so, which suit must be tried, and proceed on as a regular suit — *Civ. Ord. 2d May 1813, par. 1*

Made in such process to proceed on the application of a collector for the confinement of a defaulter, or Native officer

80. The lands of the purchaser of a Zillah court having been sold for the amount of embezzlement with notice that his right and title were offered for sale, it was held, with reference to such notice, and Section 21 and 29 Regulation 11 1822 that the buyer was liable to loss on re-sale, in consequence of his failure to pay the purchase money, though that loss apparently arose from the claims of others — *participate, the risk thereof having been incurred by the buyer* — *S. D. A. Sel. Rep. 22d Nov. 1832, vol. 5, p. 238*

Case of the sale of the lands of a treasurer of a collector to make good the amount of embezzlement

81. A treasurer of a Collector having embezzled a sum of money, his security was called upon to make good the amount deficient. He deposited it, and received from the Collector three monetary obligations, the property of the treasurer towards the reimbursement of the sum paid by him. Subsequently Government absolved the surety and directed repayment of the amount deposited by him. On being required by the Collector to restore the money obligations he declined to do so, and requested that the nominal value of them might be deducted from the amount payable to him. Held that the Government was absolved from all liability under the obligations, in the event of the surety being unable to realize the sums due on them from the parties who executed them. — *S. D. A. Sel. Rep. 18th Sept. 1843, vol. 7, p. 131.*

Case of embezzlement by the treasurer of a collector, whose surety had made good the amount and had received monetary obligations belonging to the treasurer and when absolved, declined to restore them

## SECTION VIII.

*Nazirs.*

N. not liable for sums due from those who escape from them, except in case of collusion.

82. *Nazirs* of Civil courts are not liable to pay the amount of sums due from persons who escape from their custody, unless collusion on their part be proved.—*Con.* 53, 18th Nov. 1809.

How claims against N. for injuries arising from neglect or misconduct are to be dealt with

83. Claims against the *nazirs* of Civil courts for alleged injury to parties from neglect of duty or other misconduct must be received and tried as regular suits: no summary investigation is allowed. They should be decided as speedily as possible, and security may be taken from the *nazir* to perform the judgment on such claims. *Ibid.*

N. cannot force an entry into a house, if the door is barred.

84. A *nazir* or other person deputed on his part to serve process agreeably to Section Regulation 2 1806, having entered the compound of the defendant's house, is not authorized to force an entry into the house, in the event of the defendant's shutting the door against him.—*Con.* 745, 21st Dec. 1832.

N. will receive no commission on the sale of personal property realizing proceeds

85. *Nazirs* may be employed in the attachment and sale of personal property for the purpose of realizing fines, or of decrees, regular or summary, but are not entitled to receive any commission on the proceeds of such sales as *Moonsiffs* are under Section 52, Regulation 23, 1814.—*Con.* 509, 29th May 1829.

the sale of what property the N. is entitled to a percentage

86. The *nazir* of the Civil court is entitled to a percentage on the sale of *luxuries* property, for that being at the disposal of Government, they may grant him a commission on the proceeds of the sale. But not on the sale of the property of a deceased person, not intestate, as this sale is extra official, for conducting which the *nazir* can claim no remuneration but what may have been agreed on by an arrangement with the administrator. Nor can he claim a percentage on the sale of property sold in execution of decrees, nor of property sold in satisfaction of sums embezzled by public officers, such sales being in fact in execution of decrees or orders of court.—*Con.* 824, *Cal. C.* 30th Aug., *West. C.* 1st Nov. 1833.

N. will investigate the sufficiency of security in pauper suits

87. As no fees are leviable for the remuneration of *amcens* appointed under Circular order Sudder dewanny adawlut, of the 13th January, 1837, for investigating the sufficiency of security tendered to the Court of Sudder dewanny adawlut, of the circumstances of parties wishing to sue as paupers, these duties should be entrusted to the *nazir* or *Moonsiff*.—*Con.* 1078, *Cal. C.* 10th March, *West. C.* 31st March 1837.

N. liable to damages for misrepresenting the value or sufficiency of any security

88. If it be shewn on a civil prosecution that the *nazir* of a Criminal court has wilfully misrepresented the value or sufficiency of any security, in regard to which he had been directed to enquire and report, and that loss ensued in consequence of such misrepresentation on his part, he would be liable to the payment of damages at the discretion of the court before whom the suit was brought.—*Con.* 1014, *West. C.* 17th June, *Cal. C.* 8th July 1836.

In such cases N. must be prosecuted in a regular suit

89. Held by the Sudder dewanny adawlut that the Regulations in force do not provide any summary remedy against losses sustained in appeal cases from the insufficiency of security pronounced by the *nazir* of a Civil court to be good and sufficient for the performance of final judgment; but that the injured party can only have his remedy by the institution of a regular suit under the provisions of Regulation 4 of 1793.—*Rep. Sum. Cases*, 2d July 1839, p. 21.

## SECTION IX.

*Establishment of Naibs, Mirdahs and Peons in Zillah and City Courts.*

90. The nazirs of the several Courts of judicature, civil and criminal, shall be allowed, as heretofore, to appoint their own naibs, and the mirdahs and peons, or any similar descriptions of public servants employed under their immediate direction and control; and to fill up all vacancies, which, from time to time, may occur in such appointments, subject to the approbation of the Judges and Magistrates superintending the courts to which they are attached, and to the responsibility prescribed by Section 2, Regulation 13, 1793, and Section 2, Regulation 12, 1803, for the good behaviour of the naibs, mirdahs, peons, and others appointed by them. They may also, as hitherto, remove the persons so appointed by them, provided they can state sufficient cause to the satisfaction of the Judge and Magistrate, but not without his previous knowledge and sanction.—*Reg.*

N. of the courts of judicature allowed to appoint certain public servants employed under them, and to fill up vacancies subject to the approbation of J and M, and to the responsibility prescribed by sec. 2, reg. 13, 1793, and sec. 2, reg. 12, 1803. They may also remove such servants on stating sufficient cause to the satisfaction of J. or M. but not without his previous knowledge and sanction.

91. The nazirs are to enter into a muddulka or penal obligation, in such sum as may be required by the courts to which they may be respectively attached, for the good behaviour of the naibs, mirdahs, and peons whom they may appoint.—*Reg.* 13, 1793, Sect. 2.—*Benares Reg.* 12, 1795, Sect. 2.—*Civil and Cong. Prov. Reg.* 12, 1803, Sect. 2.

To execute penalty to be paid for their good behaviour.

92. When a summons or any process is issued against a defendant or a witness in a cause or any other person who may not reside or be present at the place at which the Court may sit, and for the serving or executing of which a peon or peons may be necessary, each peon is to be paid by the party in whose behalf the summons or process may issue, four annas per day for his subsistence, excepting in districts where custom may have fixed the subsistence money of peons at a lower rate, in which case the lower rate and no more is to be paid.—*Reg.* 29, 1793, Sect. 20.—*Benares Reg.* 8, 1795, Sect. 9.—*Civil and Cong. Prov. Reg.* 3, 1803, Sect. 21.

Summons and process to be served and executed by peons.

Daily allowance to be paid to the peons.

[The above rule is adopted by Regulation 26 of 1811, for which look below, Rules 97 and 98.]

93. The name of each peon deputed to serve the process, the amount of his subsistence money, and the number of days for which he is to receive it is to be endorsed on the writing. No greater number of peons than two are to be deputed to serve or execute any process of the courts, and one peon only is to be sent, excepting in cases in which the Judges may think two peons necessary.—*Reg.* 1, 1793, Sect. 20.—*Benares Reg.* 8, 1795, Sect. 9.—*Civil and Cong. Prov. Reg.* 3, 1803, Sect. 21.

Further instructions regarding the peons.

94. Such part of the Regulations in force as authorize the payment of tuldharah (subsistence or diet money) to peons or other persons, who may not receive a fixed monthly salary from Government for serving the summonses or other processes of the Civil and Criminal courts, are hereby declared subject to the following modifications and additions.—*Reg.* 26, 1811, Sect. 11, Cl. 1.

Modifications of the rules in force regarding the payment of tuldharah.

95. The Judges and Magistrates of the several zillahs and cities shall call upon

A register of peons.

employed in serving the civil and criminal processes of the zillah and city courts, (who may not receive a monthly salary from govt.) to be prepared,

their respective nazirs for detailed lists of the peons now employed in the execution of civil and criminal processes, who do not receive a monthly salary from Government, and after ascertaining what number is requisite in addition to the chuprassies on the public establishments for the service of such processes, they shall select a sufficient number of the fittest persons to be so employed, and shall cause their names to be registered with the following particulars, viz. The names of their fathers, their age and places of abode, and a concise description of their persons.—*Ibid*, Cl. 2

Not to employ any peons but those who may be duly registered, or who may be officers on the public establishment.

96. The nazirs are hereby strictly prohibited under pain of immediate dismissal, from employing any person not registered in the mode above prescribed, and not being an officer on the public establishment, in the service of any process, civil or criminal, or in the execution of any order or official act whatever, without a special authority from the Judge or Magistrate or other public officer competent to give such directions. — *Ibid*, Cl. 3.

Distinguish badge to be issued to the registered peons. And a table of rates to be prepared, applicable to the several divisions, according to which the tulubana is to be paid.

97. The peons who may be registered as above required shall be furnished with an uniform belt, or such other badge of office at the discretion of the Judge as shall suffice to distinguish them from the chuprassies on the fixed establishments. The expense of such badge shall be defrayed out of the tulubana of the peon receiving the same. The Judges and Magistrates of the several Zillah and City courts are to frame a table for regulating the account of tulubana demandable on the service of process, civil and criminal, according to the rates prescribed by the Regulations or established by usage. The table shall contain a statement of the several Police jurisdictions, or other more convenient local divisions, the computed distance of the centred part of such local division from the sudder station, and the number of days for which tulubana is to be allowed on the serving of process within each local division, calculated on the computed distance of the centre of each local division from the sudder station.—*Ibid*, Cl. 4.

The table of rates to be so framed in the cutcherries, and no higher rates to be taken or demanded.

98. The table so framed shall be suspended for general information in the cutcherries of the Judge and Magistrate and of the Collector of the district, and no tulubana shall be allowed in any instance beyond the rates, or for a greater number of days, than may be prescribed in such table without a special written order from the Judge, or Magistrate, the Register, assistant, or other public officer competent to pass the same.—*Ibid*, Cl. 5.

The amount of the tulubana demandable and a specific receipt for it to be endorsed on the process, previously to its execution.

99. The amount of tulubana which may be demandable according to the table mentioned in the preceding clause, shall be specified on the back of each summons or other process, and the amount shall be paid, by the person taking out the process, to the nazir previously to the execution of such process; a receipt shall be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received.—*Ibid*, Cl. 6.

Provisions where two or more processes may be served by one peon.

100. When two or more processes may be served by one peon, the Judge and Magistrate, or other officer, who may order the same to be served, shall determine in what proportion the fixed rates of tulubana shall be paid by the parties respectively, and shall sign an order to that effect on the face or back of the process.—*Ibid*, Cl. 7.

101. When the process shall have been executed and returned according to the preceding rules, the nazir shall pay to the peon, who may have served the same, three-fourths of the amount of the tulubanaah received by him on account of such process, and the nazir shall be entitled to appropriate the remaining one-fourth of the tulubanaah, to his own use. —*Ibid.*, Cl. 8.

The peon to receive three-fourths and the N. one-fourth of the amount of the tulubanaah, when the process shall have been executed.

102. The Judges and Magistrates, the Registers, and assistants, are required to take every possible precaution, and to give all practicable attention for the purpose of preventing illegal or undue exactions for diet or subsistence money under the name or pretence of tulubanaah. —*Ibid.*, Cl. 9.

Every precaution to be adopted to prevent undue exactions on account of tulubanaah.

\* 103. I am directed to communicate to you the opinion of the Court that a Judge is not competent to exercise any interference in the matter referred to in your letter, but that the nazir may himself be permitted to exercise his discretion in advancing to the peon, on his own responsibility, such portion of the tulubanaah as he might consider necessary for the subsistence of the latter while engaged in serving the process on account of which it was paid. — *Con* 1084, *Cal. and West. C.* 31st March 1837.

A zillah judge is not competent to interfere in regard to the payment of the tulubanaah of the nazir's peons.

## SECTION X.

### *Ministerial Officers in the Courts of Native Judges.*

104. And it is hereby enacted, that all ministerial officers of the courts of Mooniffs, Sudder Ameens, and Principal Sudder Ameens shall be nominated and appointed by those courts respectively, subject to the general control of the zillah and city Judges and Court of Sudder dewanny adawlut within whose jurisdiction the said courts may be situated. — *Act XXV*, 1837, *Sect.* 12.

All ministerial officers of the courts of M. S. A. & P. S. A. shall be appointed by those courts, subject to the general control of the zillah and city judge and S. D. A.

105. The Court observe, that the law does not require the confirmation of the zillah or city Judge to the appointment by the subordinate judicial functionaries of his district of the ministerial officers of their respective courts, but merely declares that the appointment of those officers shall be made subject to the general control of the zillah and city Judges and of the Court of Sudder dewanny adawlut and they are, therefore, of opinion that the interference of the district Judges in such cases shall be exercised only with a view to prevent the appointment of improper persons, or the dismissal, without good and sufficient cause, of individuals already appointed. — *Con.* 1160, *West. C.* 27th July, *Cal. C.* 17th Aug. 1838.

The J. need not confirm all appointments of amlahs of the uncov judges. The exact nature of his interference defined.

106. The Court, having become aware of an instance in which a Principal Sudder Ameen dismissed the amlah of the court to which he had been appointed, with a view to make room for those who were employed under him in another district, direct me to request that you will warn the Principal Sudder Ameens and other Native Judges attached to your jurisdiction, of the impropriety of such a proceeding, and impress upon them that no officer employed under them is to be dismissed except on the score of misconduct or incapacity, and that they are not in any way to compel or require an officer to resign his situation so long as he discharges his duties in a correct and efficient manner. — *Cir. Ord. Cal. C.* 5th Sept., *West. C.* 5th Oct. 1838, *par.* 1.

Uncov N judges cannot dismiss amlahs to make way for their own men, or require an amlah to resign. Definition of the causes of dismissal.



Nature of the control to be exercised by the Judge regarding the amlaks. An amlak improperly dismissed may appeal to the Judge.

107. The general power of control over the appointment of the ministerial officers of the Native Judges, vested in you by Section 12, Act XXV. 1837, must be considered to include not only the duty of seeing that no improper person is appointed, but also that of restraining the Judges from dismissing, except for some good and sufficient reason, any person once placed on their establishments. It is accordingly competent to you to receive an appeal from any individual who may consider himself improperly dismissed from office by a Native Judge, and to direct his restoration if you consider such a measure expedient.—*Cir. Ord. Cal. C. 5th Sept., West. C. 5th Oct. 1838, par. 2*

Cases of flagrant impropriety in the dismissal of amlaks to be reported to S. D. A.

108. Any case of this description characterized by flagrant impropriety, which may be brought to the notice of the Court, will be visited with their severe displeasure.—*Ibid, par. 3.*

Further definition of the control to be exercised over the amlaks of S. Judges.

109. With a view of defining the general control of the Zillah and City Judges and Court of Sudder Dewanny Adawlut, to which arrangements, connected with the ministerial officers of the courts of Moonsiff, Sudder Amceens, and Principal Sudder Amceens are by Section 12 Act XXV. 1837, declared to be subject, and of indicating the occasions and mode of its exercise in a precise and uniform manner, the Courts of Sudder Dewanny Adawlut for the Lower and Western Provinces have been pleased to establish the following rules.—*Cir. Ord. 25th Feb. 1842*

It must obtain actual and definite knowledge of the acts of the S. J. or of his officers, in order to prevent improper appointment and dismissal.

110. The general power of control contemplated by Act XXV. 1837, Section 12, having been interpreted by Circular order dated Lower Provinces, 5th September, and Western Provinces, 5th October, 1838, to include the duty of preventing improper appointments as well as unjust dismissals of ministerial officers of the Native courts, and to invest the Judges with power to receive appeals from dismissed officers, and direct their restoration, if deemed expedient, the Court have, resolved that in order to the due and efficient exercise of such preventive and restraining power, a more certain and definite knowledge by the Judges of the acts of the subordinate courts in this department, than can be afforded by mere occasions of appeal, is necessary.—*Ibid, par. 1*

All appointments, dismissals and changes to be notified to the Judge.

111. It is accordingly notified, that for the future it shall be incumbent on Moonsiffs, Sudders Amceens, and Principal Sudder Amceens, to report all appointments, dismissals, and changes of the ministerial officers of their courts for the information of the Judge to whom they may be subordinate.—*Ibid, par. 2.*

Form of the report

112. On reporting any new appointment on their establishment the Native courts will submit to the Judge a statement in the following form.—

Name of person appointed	Place of residence and caste	Office to which appointed and how vacant	Whether ever in public employ before, and where
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—*Ibid, par. 3.*

Reports of changes.

113. Reports of changes from one situation to another on the same establishment, will always be accompanied by a brief statement of the reasons for which they are made.—*Ibid.*

Reports of dismissals.

114. Reports of dismissals will include a recital of the precise nature of the fault committed, and the reasons for considering the removal of the officer necessary.—*Ibid.*

115. Resignations will also be reported, with the grounds assigned for the step.—*Ibid.*

Reports of resignations.

116. The names of the officers on the establishments of the subordinate courts should also be registered in your office, and the receipts for their salary should be sent in monthly by the officer under whom they may be employed, accompanied by his own.—*Civ. Ord. Cal. and West. C. 2d March 1834.*

Registration of the names of the amilahs, and receipts for their salaries.

117. The Court of Sudder dewanny adawlut being of opinion, that it is inexpedient to allow the Sudder Ameens to appoint their own connections to situations on their own establishments, have determined to prohibit the practice; and accordingly desire, that previously to sanctioning the future nominations of their *amilah*, you will require from them a certificate that the nominee is not disqualified under this prohibition.—*Civ. Ord. 31st Dec. 1830.*

S. A. will not appoint their own connections as their amilahs.

118. The ministerial officers of the courts of the Sudder Ameens and Principal Sudder Ameens shall be liable to the same penalties for acts of corruption, extortion, or other misconduct, as the ministerial officers of the Zillah and City courts are now liable under the general Regulations.—*Reg. 5 1831, Sect. 25, Cl. 2.*

Ministerial officers of S. A. and P. S. A. liable for misconduct to the same penalties as other officers of the Judge's court.

It is hereby enacted, that the rule contained in the second clause of Section 25, Regulation 5, 1831 be extended to the ministerial officers of the Moonsiff courts.—*Act XXV. 1837, Sect. 11.*

Extends cl. 2 of Reg. 5, 1831, to the ministerial officers of the Moonsiff courts.

120. By Regulation 5, 1831, Section 25, Clause 2, the ministerial officers of the Sudder Ameens and Principal Sudder Ameens are declared liable to the same penalties for acts of extortion, corruption or misconduct as the ministerial officers of the Zillah and City courts are now liable under the several Regulations. These provisions are extended to the ministerial officers of the Moonsiff courts. These suits are to be received and decided by the court to which the officers sued may be attached, provided that if the amount sued for be beyond the competence of such court, it shall be forwarded to the Judge, who will refer it to any other court competent to decide it, or he may place it on his own file.—*Civ. Ord. No. 13, 1st Jan. 1831.*

Suits against the amilahs of the P. S. A. and S. A. and M. A. in extortion, corruption or misconduct.

121. Your letter was forwarded to the Civil Auditor, who was requested to furnish the Government with his opinion on the matter. He has suggested in reply that all amilahs should receive 3-10ths extra pay as travelling allowance. His Honour the Deputy Governor is of opinion that the most equitable plan will be to equalize the travelling allowances of all amilahs, without respect to nation or creed, and he thinks also, that the rates proposed by the Civil Auditor are those which should be followed.—*Civ. Ord. 20th Sept. 1839.*

Travelling allowances of the amilahs of the N. Judges.

122. There is no appeal to the Sudder dewanny adawlut from the order of a zillah Judge, dismissing a ministerial officer attached to the court of a Moonsiff.—*Rep. Sum. Cases, 23d Aug. 1842, p. 38.*

No appeal from the order of a J. dismissing the amilah of M.

## SECTION XI.

### *Nazirs and Peons employed by Native Judges.*

123. The Principal Sudder<sup>a</sup> Ameens and Sudder Ameens shall retain on their establishments, officers denominated nazirs, to whom the provisions of Clause 8, Section 11, Regulation 26, 1814, shall be applicable.—*Reg. 7, 1832, Sect. 5, Cl. 5.*

The P. S. A. and S. A. shall retain on their establishments nazirs.

Amount of security to be given by the Nazir of the P. S. A. and S. A.

124. The Court have determined that the nazirs of the Principal Sudder Ameens, and Sudder Ameens' courts be required to give security, in the same manner as is required from that class of officers in the Judge's courts. The security to be demanded from the nazirs of the Principal Sudder Ameens, has been fixed at rupees 5,000, and that demandable from the nazirs of the Sudder Ameens' Courts at rupees 1,000. *Cor. Ord 27th May 1842, par. 1.*

The security to be annually revised

125. The security which may be given by those officers shall be annually revised by the Judge, and a report of the same included in the annual civil statement, No. 9, of the Circular order No. 28, Vol. III—*Ibid.*, par. 2

Lists of peons, who may be employed for the serving of process to be kept by the P. S. A., S. A. and M.

126. The Judges of the several zillahs and cities in those jurisdictions to which the provisions of Regulation 5, 1831, may extend, shall call upon the Moonsiffs, Sudder Ameens, and Principal Sudder Ameens within their respective jurisdictions for detailed lists of the peons whom they may propose to employ for the execution of civil process, and after ascertaining what number is requisite they shall select a sufficient number of the fittest persons to be employed, and shall cause their names to be registered with the following particulars:—viz. The names of their fathers, their age and places of abode, and a concise description of their persons.—*Reg. 7, 1832, Sect. 5, Cl. 2.*

The Moonsiffs will nominate the most fit peons, and the Judge will select from them those fittest for duty

127. With reference to Clause 2, Section 5, Regulation 7, 1832, I request the favour of your obtaining for me the opinion of the Court as to whether the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs should select the peons they may propose to employ for the execution of civil processes from the registered peons, who previous to the new arrangements, belonged to the courts of the Judge, Sudder Ameens and Moonsiffs; or whether they are at liberty to nominate for the appointment of strangers. I beg leave to submit that if they are allowed to appoint new peons a considerable number of old servants must necessarily be thrown out of employ.—In reply, I am directed to inform you that under the terms of the Regulation cited by you, the nomination of the muskoree peons rests with the subordinate judicial officers, and that the Judge is required to select from among the persons nominated such number of those whom he may consider the fittest for the duty as may appear requisite. The Court observe that as the Native judicial officers possess the power of appointing and removing the ministerial officers of their courts, there can be no objections to intrusting them with the authority to nominate the persons who will be employed in executing their processes.—*Cor. 762, West C 22d Feb., Cal. C. 15th March 1833.*

In cases where process is served by an officer of the court, M. S. A. and P. S. A. prohibited from employing any person not registered

128. In cases wherein, under the provisions of this section, process is served by an officer of the court, and not by the party himself, the Moonsiffs, Sudder Ameens, and Principal Sudder Ameens are strictly prohibited from employing any person not registered in the mode above prescribed (Rule 126) without the special authority of the Judge.—*Reg. 7, 1832, Sect. 5 Cl. 3.*

Rules regarding the levy of tulubamah in such cases.

129. The rules, mutatis mutandis, contained in Clauses fourth, fifth, sixth, and seventh, Section 11, Regulation 26, 1814, shall be held applicable to the peons who may be employed under the above rule. Such duties as are therein assigned to the nazir of the Judge's court, shall in the Moonsiffs' courts be performed by the Moonsiffs themselves. The tulubamah levied in these cases shall only be three-fourths of what is levied in the Judge's court, and no part of it shall be appropriated by the Moonsiffs.—*Ibid.*, Cl. 4.

130. It is hereby enacted, that so much of Clause 4, Section 5, Regulation 7 of 1832 of the Bengal code, as enacts that certain duties assigned to the nazir of the Judge's court shall in the Moonsiffs' courts be performed by the Moonsiffs themselves, and that the tulubannah levied in the Moonsiff's court shall only be three-fourths of what is levied in the Judge's court, is repealed. And it is hereby enacted, that within the territories subject to the Presidency of Fort William in Bengal, the Moonsiffs shall from and after the passing of this Act retain on their establishments nazirs to whom the provisions of Clause 8, Section 14 Regulation 26 of 1814 of the said code shall be applicable.—*Act XII. 1845, Sects. 1, 2.*

M. are directed to entertain nazirs in their courts

131. The following rules regarding the remuneration of Moonsiffs' nazirs, and the amount of security to be demanded from them are established for general observance.—*Cr. Ord. 17th Nov. 1845, par. 1.*

Rules regarding the remuneration of the nazirs of M., and the security to be given by them.

132. The sole remuneration of nazirs of the Moonsiffs' courts will consist in a-fourth of the amount of tulubannah leviable under the provisions of Clause 8, Section 14, Regulation 26, of 1814, allotted to those courts by Act XIV. 1845.—*Ibid, par. 2.*

Remuneration of the nazirs of M

133. The amount of security to be demanded from those officers, is fixed at rupees 1,000, but this sum is liable to enhancement or reduction according as enquiry and experience may show to be expedient.—*Ibid, par. 3.*

Amount of security to be given by them.

134. The Judges are requested to ascertain and report to the Court the amount actually received by the Moonsiffs' nazirs of their districts, whether for tulubannah or any other account, during the last six months of the ensuing year.—*Ibid, par. 4.*

Judge will ascertain & report the amount received by the nazirs of M

135. The Sudder Ameeris are to be guided in regard to tulubannah by the rules in force for the guidance of the zillah and city Judges previously to the enactment of Regulation 5, 1831, namely, Regulation 26, 1814, Section 14, Clauses 1 to 7.—*Con. 668, 13th Jan 1832.*

Tulubannah of peons of S. A.

136. By Clause third, Section 29, Regulation 23, 1814, the Moonsiffs are prohibited from demanding or receiving any fee or issuing the prescribed summons for the attendance of witnesses, and by Clause fourth the party or his vakeel is required to serve the summons in person. But as the strict observance of this rule may (especially in suits of the higher description such as the Moonsiffs are now competent to decide,) be attended with inconvenience it is hereby declared that whenever the party at whose suit the process may be sued out, may be desirous of having the summons carried by a peon instead of serving it himself, or through any other person, it shall be competent to the Moonsiff to levy tulubannah for that purpose.—*Reg. 7, 1832, Sect. 5, Cl. 1.*

Moonsiffs competent to levy tulubannah for the serving of process on the demand of the party who sues it out

137. The peons attached to the Moonsiffs' courts under the provisions of Section 5, Regulation 7, 1832, are intended exclusively for the execution of judicial processes, and should not be employed in the distraint and sale of property for arrears of rent.—*Con. 861, West C. 7th Feb, Cal. C. 28th Feb. 1834.*

The peons of M to be employed only in executing judicial process

138. The Judge will carefully revise the lists of peons now employed in the execution of process in the Moonsiffs' courts, and, after ascertaining what number is requisite for the service of such processes, will select a sufficient number of the fittest persons to be so employed ;

Rules regarding the selection and registry of M.'s peons.



sum deposited with the Moonsiff, and specified on the back of the process entrusted to him for execution, will be dismissed, and be further liable to such other punishment as may be warranted by the existing Regulations.—*Ibid*, par. 8.

146. The Moonsiffs are required to take every proper precaution to prevent any illegal exactions of diet or subsistence money, in addition to the tulubanaah; and they will fully understand, that no person on their establishment is entitled to any “meeran” or share of the tulubanaah, which is to be paid entirely to the peon.—*Ibid*, par. 9.

147. The Court having had before them the returns to the Circular order of the 28th August, 1840, regarding the rates of tulubanaah payable in each moonsiffship, and observing that there is great diversity in the rate of remuneration to peons serving processes, are pleased to direct, that in future, payment shall be made in all districts within their jurisdiction, at one anna and half per diem, which is now paid in the majority of the districts both of Bengal and Behar.—*Cir. Ord. 11th March 1842*, par. 1.

148. The peons are to be paid, besides the number of days required for going to and returning from the place where process is to be served, for two days in addition for service of every subpoena, process of arrest, and process of attachment, and one day in addition for service of every other description of process.—*Ibid*, par. 2.

149. The Judges will cause to be framed, with due care, (revising it themselves by adoption) a table in the vernacular, for suspension in each Moonsiff's catcherry, showing the computed distance of each village within the jurisdiction from the court station, and the number of days allowed for the service of the process, calculated at the rate of five kos, or ten miles per diem going and returning. This table being exposed under the signature and seal of the Judge, in each Moonsiff's court, for general information, no mistake can thereafter occur, nor extra demand be made.—*Ibid*, par. 3.

150. This Circular supercedes all temporary orders that have been issued to the Judges on the returns abovementioned.—*Ibid*, par. 4.

151. The Court desire the attention of the Judges generally to the annexed extract of a Report, on Civil Justice for 1841, from the Judge of Furruckabad, regarding irregularities found by him to prevail in the Moonsiff's courts in the matter of levying and appropriating “tulubanaah” and “khorak,” in order that each Judge may satisfy himself, by careful scrutiny, as to the prevalence or otherwise of similar practices in his district, and may adopt immediate measures for stopping them, if discovered to exist.—“Much irregularity appears to me to have prevailed in all the subordinate courts of this zillah in the mode of levying and appropriating “tulubanaah” and “khorak.” The Moonsiffs have been in the habit, apparently, of retaining among their authorized peadaha a certain number of their own dependants, who have been employed by them in all their domestic menage, but whose only wages have been the sums received upon processes of the court, when made over to them for execution. In this manner it appears almost universally the practice of these officers to have five or six of their registered peons, who receive seven and eight rupees a month for tulubanaah, while the others get scarcely even more than two or three at the outside. Such a plan of procedure appears to be exceedingly exceptionable, and I hope that I shall receive the support of the Sudder Court in my endeavours to suppress and abolish it. The present second Moonsiff of Furruckabad upon taking charge of his office informed me in a proceeding that the chuprassies attached to his

anting more tulubanaah than the table allows

Exactions of money for diet by peons forbidden

Rate of tulubanaah to be paid to mooniffs' peons in all districts.

Idem.

Table of distances to be framed by the M., revised by the J., and appended in the mooniff's court.

All other temporary orders on this subject superseded.

Judges will carefully prevent all irregularities in levying or appropriating the tulubanaah of mooniffs' peons, and prevent the levying of diet money

- office, had always hitherto received, in excess of the prescribed tulubana, certain sums under the designation of "khora," as well from decreedars as from plaintiffs, vakeels and mooktars, and requested my authority to his issuing an "ishtihar" prohibiting the practice."—*Cir. Ord.* 4th Feb. 1812.

## SECTION XII.

*City, Town and Pargunnah Cazees.*

The office and duties of the town and pargunnah cazees.

152. Cazees are stationed at the cities of Patna, Dacca, and Moorshedabad, and the principal towns and in the pargunnahs, for the purpose of preparing and attesting deeds of transfer and other law papers, celebrating marriages, and performing such religious duties or ceremonies prescribed by the Mahomedan law, as have been hitherto discharged by them under the British Government, and also for superintending the sale of distrained property, and paying charitable and other pensions and allowances, under Regulations 17 and 21, 1793. The nature of the abovementioned duties renders it necessary that persons of character, and duly qualified with respect to legal knowledge, should be appointed to these offices: and to encourage them to discharge their trusts with diligence and fidelity, they should not be liable to removal, unless proved to be incapable or guilty of misconduct to the satisfaction of the Governor General in Council.—*Reg.* 39, 1793, Sect. 1.—*Cod. and Conq. Proc. Reg.* 16, 1803, Sect. 1

Cazees may authenticate powers of attorney, but the court may call for further evidence, if it appears necessary.

153. I am desirous to communicate to you the opinion of the Court, that the term "other law papers" used in the preamble to Regulation 39 of 1793, must be held to include powers of attorney, the authentication of which therefore is within the competency of a caze; but at the same time the Court observe, that you are clearly at liberty to call for further evidence in any case, where there may appear reason to doubt the due execution of an instrument of that nature by the individual whose act and deed it purports to be.—*Con.* 136, 3d Nov. 1826, *par.* 2.

The attestation of a deed of land by a caze out of his jurisdiction, is unofficial, & of no greater value than that of any other person.

154. On a question from the Judge of Allah Behar, whether a pargunnah caze could attest a deed for land situated in a pargunnah of which he was not the appointed caze, and executed out of his proper jurisdiction, the Court of Sudder dewan-y adawlat expressed their opinion, that the attestation of a caze to a deed so executed, must be considered entirely unofficial, and of no greater weight than the attestation of other persons not given officially.—*Con.* 14, 29th Nov. 1805.

Religious duties & ceremonies are valid if performed by any C not the C of the pargunnah, but the drawing up, attesting, and recording papers must be done by the C of the pargunnah, in which the property lies.

155. For all offices analogous to those which, under English courts, are included in the ecclesiastical department, such as the celebration of marriages and the performance of religious duties or ceremonies, the acts of any caze, though not specially empowered for the immediate locality, would be valid and lawful; but that the drawing up and attestation of papers and making a record of them must be performed (to be legal) by the caze of the jurisdiction in which the property specified may be situated.—*Con.* 1042, *Cal. C.* 19th Aug., *West. C.* 9th Sept. 1836, *par.* 4.

156. The Zillah court cannot summarily interfere to put a caze in possession of his purgunnahs, unless a decret expressly sanctions such a proceeding.—*Ibid*, par. 3. Power of a J. to put a C. in possession of his purgunnahs.

157. The caze ul enzaat, or head caze of Bengal, Behar, and Orissa, shall be appointed by the Governor General in Council, and shall not be removable from his office, but for incapacity, or misconduct in the discharge of his public duty, or acts of profligacy in his private conduct, proved to the satisfaction of the Governor General in Council.—*Reg. 39, 1793, Sect. 2, Cl. 1.* Head C. of the three provinces to be appointed by the G. G. in C. Not to be removed but for incapacity or misconduct proved to the satisfaction of the G. G. in C.

*Regulation 46, 1803, Sect. 2, Clause 1, ordains that the head caze of Bengal, Behar, Orissa, and Benares shall also be the head caze of the provinces ceded by the Nawab Vizier to the Honourable the East India Company.*

158. The head caze is to use a circular seal, two inches in diameter, on which shall be inscribed the designation of his office, and his name, in the Persian language, as follows:—“*The seal of the caze ul enzaat of the provinces of Bengal, Behar, and Orissa.*” (*Name of the head caze.*)—*Reg. 39, 1793, Sect. 2, Cl. 2.—Ced. and Cong. Prov. Reg. 46, 1803, Sect. 2, Cl. 2.* Seal of the head C.

159. The office of caze is declared not to be hereditary.—*Reg. 39, 1793, Sect. 5.—Ced. and Cong. Prov. Reg. 46, 1803, Sect. 5.* Office of C. declared not hereditary.

160. When the office of caze in any purgunnah, city, or town shall become vacant, the Judge of the Zillah or City court, within whose jurisdiction the place may be situated, is immediately to report the vacancy to the Governor General in Council, and recommend such person as may appear to him best qualified for the succession from his character and legal knowledge. The name of the person so recommended, is to be communicated to the head caze, who, if he shall deem him unqualified for the office, either from want of legal knowledge, or the badness of his private character, is to report the same in writing to the Governor General in Council, who reserves to himself the power of appointing such person to the office, or not, or of conferring it upon any other person, according as may appear to him proper. If there shall appear to the head caze no objection to the appointment of the person who may be so recommended, he is to report accordingly to the Governor General in Council. The person who may be appointed to the office, shall be furnished with a sunnud of appointment under the official seal of the head caze, in which the date of his appointment is to be specified.—*Reg. 39, 1793, Sect. 4.—Ced. and Cong. Prov. Reg. 46, 1803, Sect. 4.* Vacancies in the office of C., in the various parts of the country, how to be supplied.

161. I am directed by the Court to request that you will in future submit all nominations of city and purgunnah cazees and Moonsiffs for the approval of the Court, in one of the accompanying forms, as the case may require. Nomination of city and purgunnah C. to be submitted to S.D.A.



*Form for the Nomination of Cazees, Moonsiffs, or acting Moonsiffs.*

1	2	3	4	5	6	7	8	9	10	11
Vacant office	How va- cated	Name of the person nominated with the name of his father	Age	Region & caste	Family res- idence, with town or vil- lage, pergun- nah and zil- lah	Statement of position or employment, whether in the service of the Government or of any other individual	Statement of landed or other prop- erty belonging to the person nominated	Proposed residence and juris- diction	Statement of qualifications and know- ledge of the Persian, Ben- galee, or Eng- lish language, &c.	Certificate that the nomi- nee is not ille- qualified by any regula- tion

—*Cir. Ord. Cal. and West. C 14th Dec 1832*

Investigation of the  
J. before submitting  
nominations of C

162 The Court request that, before submitting applications for the appointment of town and pergunnah cazees, you will carefully compare the designation of the jurisdiction in which the vacancy has occurred, and the name of the nominee, as entered in the vernacular papers, with those inserted in the English statements — *Cir. Ord. 24th May 1841.*

Court of S. D. A.  
empowered to con-  
firm the appointment,  
removal and resigna-  
tion of the law officers  
of the provincial, zil-  
lah and city courts &  
the C of cities towns  
and pergunnahs.

163 The Court of Sudder dewanny adawlut is empowered to confirm the appoint-ment, removal, and resignation of the law officers of the Provincial, Zillah, and City courts, and of the cazees of cities, towns, and pergunnahs, on receiving the reports prescribed by Sections 5, 6 and 9 Regulation 5, 1804 with the following modification of Section 6 — *Reg. 8, 1809, Sect. 4, Cl 1*

Rule in the proce-  
ding section applied  
to the C stationed in  
the interior parts of  
the country

164 The cazees stationed in the cities towns, or pergunnahs in the three provinces shall not be removable from their offices excepting for incapacity or misconduct in the dis-charge of their public duty or acts of profligacy in their private conduct. The cazees so stationed, are to use a circular seal, one inch and a half in diameter, on which shall be in-serted the designation of their office and their name in the Persian language as follows :  
“ *The seal of the caze of the city (town, pergunnah or pergunnahs) of ————* ”  
*Name of the caze.*—*Reg. 39, 1793, Sect. 3, Cl 1 — Cal. and Comp. Proc. Reg. 46 1803, Sect. 3, Cl 1*

The rules contain-  
ed in the five prece-  
ding sections declar-  
ed applicable to the  
law officers and the C

165 The rules contained in the five preceding sections [in which are included Sec-tions 5 and 6 given below] shall be held applicable to the law officers of the several Courts of justice, to the caze ul cazaat, and cazees of the towns, cities and pergunnahs.—*Reg. 5, 1804, Sect. 10*

Applications of the  
head N officers for  
permission to re-  
sign, to be publicly  
recorded and submit-  
ted through the pre-  
scribed channel

166 Whenever the head ministerial Native officers of the courts shall be desirous of resigning their offices, the abovementioned authorities are hereby required to receive and record such resignations in open court, or in their public cutcherries and to transmit the same through the channel prescribed — *Ibid. Sect. 5.*

Rule of proceed-  
ing to be observed when  
there may appear to  
be cause for the re-  
moval of any head N  
officer.

167 Whenever the authorities specified in the preceding sections may see cause for the removal of any of their head Native officers on the ground of misconduct, incapacity, or otherwise, they shall communicate to such officer the grounds upon which they may

consider him undeserving of continuance in his station; and call upon him to state what he may have to offer in his defence.—*Ibid.*, Sect. 6.

168. In cases however in which the head Native officer of any of the authorities noticed in Section 4, may have been guilty of gross misconduct, such as to require his immediate suspension from the exercise of the functions of his station, the officer, under whose authority he may be employed, is empowered to suspend him; and, if requisite for the public business, to nominate another person, duly qualified, to act in his place, until the orders of the Governor General in Council can be obtained upon the case.—*Ibid.*

169. It shall likewise be the duty of the head cazeer, to report to the Governor General in Council in writing, every instance in which it may appear to him, that the cazeer of any city, town, or purgunnah, is incapable, or in which any such cazeer may have been guilty of misconduct in the discharge of his public duty, or acts of profligacy in his private conduct.—*Reg.* 39, 1793, Sect. 6. Cl. 2.—*Ced. and Cong. Prov. Reg.* 46, 1803, Sect. 6, Cl. 2.

Reports to be made by the head C. to G. G. in C. of the incapacity or misconduct of cazeers.

170. Whenever a Provincial, Zillah, or City court may see cause for the removal of a law officer or cazeer, on the ground of any misconduct, or neglect of duty, experienced incapacity or other disqualification, such court shall report the circumstances of the case with its opinion on the subject to the Sudder dewanny adawlut, who will pass such order on the report so made as may appear to be proper, or will call for any additional information or direct any further enquiry, which the nature and circumstances of the case may require.—*Reg.* 8, 1809, Sect. 1, Cl. 2.

Rules to be observed by a provincial, zillah, or city court on seeing cause for the removal of a law officer on the ground of misconduct, neglect of duty, or experienced incapacity.

171. The cazeers stationed in the several zillahs and cities are to be liable to be sued in the Dewanny adawlut for any undue practices in the discharge of the duties prescribed to them by Regulation 17, 1793, or any other Regulation, printed and published in the manner directed in Regulation 41, 1793.—*Reg.* 39, 1793, Sect. 11.—*Ced. and Cong. Prov. Reg.* 46, 1803, Sect. 11

C. stationed in the zillahs and cities liable to be sued in the cases hereinafter specified.

172. No ministerial officer of a court or vakel shall in future be eligible to a cazeership; and no cazeer to the situation of ministerial officer or vakel.—*Cu. Ord. Ced. and Hist. C.* 6th Dec. 1839, par. 2.

No amils of a court, or vakel, can be appointed C. and vice versa.

173. The foregoing rule will not of course interfere with the instructions conveyed by the Court's Circular, No. 197, of the 13th January, 1837, by which the zillah and city Judges were authorized to appoint the city and purgunnah cazeers as amicus for the performance of the miscellaneous duties therein enumerated. Those duties being of an occasional nature, the performance of them cannot materially interfere with the discharge of the proper functions of the cazeer's office.—*Ibid.* par. 5.

But city and purgunnah C. may be appointed amicus.

174. With reference to the provisions of Clause 1, Section 8, Regulation 23 of 1814, cazeers will of course be eligible to the situation of Moonsiff; but you are requested to impress upon all incumbents of cazeerships on assuming the judicial character, that in the event of their ever becoming involved in unseemly disputes with the parties suing or sued in their courts, in respect of fees claimed by them for the performance of marriage ceremonies, affixing seals to do-

C. eligible to the situation of moonsiff, but if the duties of the two offices clash, they will be removed from that of M.

cuments, or doing other acts in their capacity of cazee, their removal from the office of Moon-siff will necessarily ensue.—*Ibid*, par. 4.

Rule in cl. 1. not to preclude the G. G. in C. from abolishing the office of C. at any place where he may deem the continuance of such an officer unnecessary.

175. The rule contained in the preceding clause is not to be construed to preclude the Governor General in Council from abolishing the office of cazee at any place, where from the number of cazees stationed in the district, or other cause, the continuance of such an officer may appear to him unnecessary.—*Reg. 39, 1793, Sect. 3, Cl. 2.—Ced. and Cong. Prov. Reg. 46, 1803, Sect. 3, Cl. 2.*

Judges of the zillah and city courts to report the number of C. stationed in their respective jurisdictions.

C. of purgunnahs to be stationed in the centre of the purgunnahs.

176. Upon the receipt of this Regulation, the Judges of the zillahs and cities are to transmit to the Governor General in Council, the names of the places in their respective jurisdictions in which cazees are stationed, the names of the cazees, and what number of cazees they deem sufficient for their respective jurisdictions. The Judges of the zillahs are to fix the residence of the cazees stationed in the purgunnahs in the most central places, in order that distrainers of property, and persons whose property may be distrained, under Regulation 17, 1793, may have ready access to them.—*Reg. 39, 1793, Sect. 9.—Ced. and Cong. Prov. Reg. 46, 1803, Sect. 9.*

Records to be kept by the local C. and the C. stationed in the interior parts of the country which are to be delivered complete to their successors.

177. The head cazee, and the cazees stationed in the cities, purgunnahs and towns, are to keep copies of all deeds, and law or other papers, which they may draw up, or attest, and are to affix thereto their seals and signatures. They are likewise to keep a list of all such papers, and in the event of their death, resignation, or removal, the list and papers are to be delivered complete to their successors.—*Reg. 39, 1793, Sect. 7.—Ced. and Cong. Prov. Reg. 46, 1803, Sect. 7.*

Rules for the registration of deeds by C.

178. With a view therefore to the better attainment of the objects of the registration of deeds by the purgunnah cazees, the Court request that you will direct those officers to enter copies of all deeds attested by them in books, to be furnished to them by you, paged throughout, and attested with your initials, and properly bound up; to forward to you monthly a list, drawn up in the annexed form, of the deeds so attested and registered; and to forward the books themselves to your office, when filled up, for the purpose of being deposited among your records for preservation as well as future reference.

#### Form of List.

No. of the deed in the registry	Page of the registry in which the deed is entered	Date of deed, and names of the parties and subscribing witnesses thereto	Date of attestation and names of parties and witnesses present on the occasion.	Description of deed.
---------------------------------	---	--	---	----------------------

—*Cir. Ord. Cal. C. 28th Sept., West. C. 28rd Nov. 1839.*

C. may be appointed ameen when their services are available

179. The zillah and city Judges shall select and appoint as many duly qualified persons they may deem requisite to act as *ameens*, who shall perform the miscellaneous duties abovementioned; of course the Judges will be at liberty to nominate the city and purgunnah cazees to those duties, when their services may be available.—*Cir. Ord. Cal. C. 18th Jan., West. C. 10th Feb. 1837.*

180. The rules regarding *eazees* have not been affected by the late enactments : they may consequently be employed as heretofore, under the general Regulations. With regard to their authority to distrain property, I am directed to refer you to Clause 3, Section 20, Regulation 28, 1803, corresponding with Regulation 7, 1799, Section 6, Clause 3.—*Cir. Ord. West. C. 26th July, Cal. C. 1st Nov. 1833, par. 9.*

C. may be employed as heretofore under the general regulations. Distrain of property by them

181. The *eazees* stationed in the cities, towns, and *purgunnahs*, are not to exact any fees for drawing up, or attesting papers, or for the celebration of marriages, or the performance of any religious duties or ceremonies which it has been customary for them to perform excepting such as the parties concerned may voluntarily agree to pay, as has been hitherto the practice.—*Reg. 39, 1793, Sect. 8.—Ced. and Cong. Prov. Reg. 46, 1803, Sect. 8.*

Rules regarding the fees of the C

182. A *purgunnah eazee* may sue to recover what he may consider himself entitled to for fees of office ; but it rests with the court to determine the extent to which such claim should be admitted, and it must be remembered that the payment of fees is entirely voluntary (see Section 8 Regulation 39, 1793.)—*Con. 1012, Cal. C. 19th Aug., West. C. 9th Sept. 1836, par. 2.*

A purgunnah C may sue for what he considers his fees, but the payment of fees is entirely voluntary.

183. The Judges in Bengal and Orissa are to furnish the *eazees* stationed in their respective jurisdictions with copies of the Persian and Bengal translates of all Regulations, printed and published in the manner directed in Regulation 41, 1793. The Judges in Behar are to furnish the *eazees* stationed in their respective jurisdictions, with the Persian translates of all such Regulations. — *Reg. 39, 1793, Sect. 10.—Ced. and Cong. Prov. Reg. 46, 1793, Sect. 10.*

Judges to furnish the C with copies of the translates of all regulations, published as directed by reg 41, 1793.

184. I am directed by the Court to acknowledge the receipt of your letter of the 8th ultimo, requesting to be furnished with copies of any orders regarding the legality of the appointment of deputies to assist the city and *purgunnah eazees*, or determining the extent to which the assistance of deputies, if legally appointed, is available.—In reply, I am directed to transmit to you the accompanying copies of a letter from the acting Judge of *Zillah Shahabad*, dated 10th December, 1817, requesting to be informed if the duty of *eazee* can be performed by proxy ; of the Court's reply, under date 2nd April, 1818, forwarding copy and translation of a *futwa* of the law officers of the Court, in which it is stated that a *eazee* cannot, without the express permission of the *hakum* or ruling power, legally appoint a deputy ; and of a letter addressed to the Judge of *Shahabad* on the 6th April, 1821, in the 3rd paragraph of which a "deputy *eazee*" is stated to be an officer not acknowledged or mentioned throughout the Regulation quoted, (Regulation 39, 1793.)—*Con. 707, Cal. and West. C. 27th July 1832.*

Eazee cannot appoint a deputy without the express permission of the ruling power

185. No *eazee* should be permitted to delegate any of his essential functions, such as the power of affixing the seal of office to documents, to an irresponsible agent not recognized by law, as the residence of a *eazee* at a distance from his nominal jurisdiction, and his appointment of a *nail* to act under his *sunnud* by proxy, are opposed to the obvious use and purpose of the office and irreconcilable with a due discharge of its duties.—*Cir. Ord. Cal. and West. C. 6th Dec. 1839, par. 5.*

Not C should be allowed to delegate his essential functions to a deputy at a distance

186. The foregoing rule is not intended to prohibit the vicarious agency of a deputy in the performance of such acts, (for instance the solemnization of marriages when the parties are willing,) as may be legally done by others than *eazees*.—*Ibid, par. 6.*

But a deputy may solemnize marriages and such acts as may be legally done by others than C.

A zemindar cannot collect fees belonging to the office of C.

187. Held by the Court on a summary application that it is not competent to a zemindar to collect fees appertaining to the office of cazeer: the question of right however was still left open to a regular suit, should the zemindar think proper to try it.—*Rep. Sum. Cases*, 15th Jan. 1811, p. 1.

[The enactments regarding the appointment of cazeers in Benares are given separately below.]

Cazeers in Benares, Mirzapore, Ghazepore and Jaunpore

188. Cazeers are stationed in the city of Benares, and the towns of Mirzapore, Ghazepore, and Jaunpore, and in the pargunnahs in the province of Benares, for the performance of the same duties as are assigned to the cazeers in similar situations in the provinces of Bengal, Behar, and Orissa; and the prescriptions contained in that Regulation with the exception hereafter specified, being equally applicable to the province of Benares, the following rules have been enacted.—*Reg. 49, 1795, Sect. 1*

Head C of Bengal, Behar and Orissa, to be head C of Benares.

189. The head cazeer of the provinces of Bengal, Behar, and Orissa, shall also be head cazeer of the province of Benares, and shall be appointed under the rules prescribed in Clause 1, Section 2, Regulation 39, 1793.—*Ibid*, Sect. 2, Cl. 1.

Inscription for the seal of the head C of the four provinces

190. The following inscription is to be substituted on the seal of the head cazeer, in lieu of that prescribed in Clause second, Section 2 Regulation 39, 1793: "The seal of the cazeer ul euzaat of the provinces of Bengal, Behar, Orissa, and Benares" (Name of the head cazeer).—*Ibid*, Cl. 2

Rules in reg. 39, 1793 from sec. 3 to sec. 11 extended to Benares

191. The rules contained in the several sections of Regulation 39, 1793, from Section 3 to Section 11, regarding the cazeers stationed in the cities, towns, and pargunnahs in the provinces of Bengal, Behar, and Orissa, are hereby extended to the cazeers stationed in the city of Benares, and in the towns of Mirzapore, Ghazepore, and Jaunpore, and the several pargunnahs in the province of Benares, with this exception, that instead of Regulations 17 and 21, 1793 they are to consider the prescriptions contained in Regulation 15, 1795 and Regulation 31, 1795 as the rules for their guidance with regard to the sale of property distrained for arrears of rent or revenue, and the payment of pensions.—*Ibid*, Sect. 3.

Exception.

### SECTION XIII

#### *Law Officers of the Zillah and City Courts—their Appointment and Removal.*

Qualifications for the law officers.

192. The law offices in the several courts are to be conferred on persons well versed in the laws, and of unblemished moral characters.—*Reg. 12, 1793, Sect. 3.—Benares Reg. 11, 1795, Sect. 2—Ced. and Conq. Pron. Reg. 11, 1803, Sect. 3.*

Pundits and moolvers will attend at the courts

193. In the respective cases, the Mahomedan and Hindoo law officers of the court are to attend to expound the law.—*Reg. 4, 1793, Sect. 15.—Benares Reg. 8, 1795, Sect. 2.—Ced. and Conq. Pron. Reg. 3, 1803, Sect. 16, Cl. 1.*

Copies of bewustahs to be sent to the S. D. A. through the J. of the district in which the pundit's division lies

194. The Court are pleased to direct that the copies of bewustahs delivered by the pundits, be forwarded to this office through the Judge of the district in which the division or zillah pundit resides, and not separately through the Judges of the districts from which requisitions for opinions were made.—*Cir. Ord. 15th March 1844.*

195. I am directed by the Court to communicate to you the following orders, issued under instructions from the Supreme Government, and with the sanction and approval of the Right Honourable the Governor of Bengal, abolishing the present system, under which a pundit has hitherto been attached as Hindoo law officer, to the establishment of each Zillah court.—2 The principle of the new arrangement is the appointment of provincial pundits, having jurisdiction, as law officers, over a certain number of zillahs and being constituted, with respect to such districts, the legally authorized expounder of the Hindoo law; the salary, when the arrangements are completed, will be fixed at 150 Rs. per mensem - 3. The circles into which the several districts within the jurisdiction of the Presidency court are to be formed, will be as follows:-

Pundits to be in future appointed to a circle consisting of a certain number of districts.

Details of this plan.

<i>Names of Circles</i>	<i>Districts comprised in each.</i>	<i>Station where the Pundit will ordinarily reside.</i>
1st or Presidency Circle	1 East Burdwan. 2 West Burdwan 3 Hooghly. 4 Jessore. 5 Malda. 6 Nudda. 7 Cuttack. 8 The 24-Pargannas	The 24-Pargannas
2d or Dacca Circle	1 Backergunge 2 Mynuckingh 3 Tappetah 4 Chittagong 5 Sylhet. 6 Dacca.	Dacca
3d or Moorsheadabad Circle.	1 Bechbloom. 2 Bhargulpore 3 Dinagepore 4 Purneah 5 Rajshahye. 6 Rangpore. 7 Moorsheadabad	Moorsheadabad
4th or Behar Circle	1 Behar. 2 Surm 3 Shahabad. 4 Tirhoot. 5 Patna.	Patna

—*Cur. Ord* 11th Dec. 1840

196. The Mahomedan law officers of the Courts of civil judicature, previous to entering upon the execution of the duties of their offices, are to take and subscribe the following oath before the court to which they may be respectively attached:—“I A. B., eazee (or muftee) to the Sudder dewanny adawlut, (or the Provincial court of appeal for the division of ———, or the Dewanny adawlut of the zillah or city of ———) solemnly swear, that I will truly and faithfully perform the duties of eazee (or muftee) of this

Oath to be taken by the Mahomedan law officers of the civil courts of judicature previous to their entering upon their offices.

court, according to the best of my knowledge and ability ; that I will not receive, directly or indirectly, any present or mizer, in money or effects of any kind, from any party or person whomsoever, on account of any suit, to be instituted or which may be depending, or have been decided in the court of which I am *caze* (or *muftee*); and that I will not, directly or indirectly, derive any advantage or emolument from my office, excepting such as the orders of Government do or may authorize me to receive.— *Reg. 12, 1793, Sect. 5, Cl. 1. Bontres Reg. 11, 1795, Sect. 2 - Cl. and Comp. Proc. Reg. 12, 1803, Sect. 5, Cl. 1.*

Declaration to be made by the pundits to the courts of civil judicature.

197. The pundits to the Courts of civil judicature, previous to entering upon the execution of the duties of their offices, are to make and subscribe the following declaration before the courts to which they may be respectively attached — I, A B pundit to the Sadler dewanny adawlut (or the Provincial court of appeal for the division of — — — or the Dewanny adawlut of the zillah or city of — — — ) solemnly declare that I will truly and faithfully execute the office of pundit of this court according to the best of my knowledge and ability, that I will answer all questions that may be put to me in writing or orally, by the said court, that I will declare or give in writing, what is in the Shaster; that I will not declare or give in writing what is not warranted by the Shaster; that if I declare any thing not warranted by the Shaster, I shall be deserving of punishment from Ishwar. I propose and swear, that I will not receive, directly or indirectly, any present or mizer, in money or effects of any kind, from any party or person whomsoever on account of any suit, to be instituted, or which may be depending, or have been decided in the court of which I am pundit, and that I will not directly or indirectly, derive any advantage or emolument from my office excepting such as the orders of Government do or may authorize me to receive"—*Reg. 12, 1793, Sect. 7. - Bontres Reg. 11, 1795, Sect. 2, Cl. and Comp. Proc. Reg. 11, 1803, Sect. 7*

A solemn declaration substituted for the prescribed oath in cases

198. Instead of the prescribed oath, which is required by the Regulations in force, the several Native officers referred to in the above clause, shall hereafter make and subscribe, in open court, or in the established public office, before the Judges, Boards, Collectors, Commercial Residents and Agents or other European authorities to which they may be respectively subject, a solemn declaration to the same effect with the form of oath heretofore prescribed except that the word "declare" shall be substituted for "swear" and that the declarer shall not be sworn thereto.—*Reg. 18, 1817, Sect. 2, Cl. 2.*

By whom such declarations to be attested, and the above rule to be enforced.

199. The Judges, Boards, Collectors, or other European officers before whom such declarations are required to be made and subscribed, shall attest the same as publicly read and subscribed before them, in pursuance of the above clause, and shall be careful to enforce a due observance of the rule therein contained, by the Native officers appointed to act under them respectively.—*Ibid. Cl. 3*

Reg. 5, 1804, 8, 1809, and 18, 1817, modified.

200. The rules contained in Regulations 5, 1804; 8, 1809, and 18, 1817, or in any other Regulation now in force, relative to the nomination and appointment of the law officers of the several Courts of justice, are hereby declared subject to the modifications

contained in the present Regulation : provided, however, that nothing in this Regulation shall be construed to alter or affect the power vested in the Court of Sudder dewanny adawlut by Section 4, Regulation 8, 1809, of confirming the removal of the law officers of the Provincial, Zillah and City courts; or to alter any part of the rules now in force respecting the removal of a law officer attached to any of those courts.—*Reg. 11, 1826, Sect. 2.*

201. The law officers of the Provincial courts of appeal and circuit, and of the Zillah and City courts, shall hereafter be appointed by the Governor General in Council.—*Ibid, Sect. 4, Cl. 1.*

The law officers of the provincial, zillah and city courts, to be hereafter appointed by the G. G. in C.

202. Whenever a law officer may be removed from his station, or whenever a vacancy may occur in the office of law officer in any of the Courts of justice, from death, resignation or otherwise, the Judge or Judges of the court, in which the removal or vacancy may have occurred, shall nominate for the approbation of the Governor General in Council a person duly qualified to succeed to the station so vacated, and shall at the same time report fully the past employments, character, qualifications and age of the proposed successor and likewise whether he has obtained the prescribed certificate of qualifications hereafter noticed. The Governor General in Council, on consideration of such report, or after calling for any further information that may appear necessary, will either confirm the person so nominated to fill the vacated office or will issue orders for his examination, or appoint any other person whom he may deem better qualified for the office.—*Ibid, Cl. 2.*

Rule to be observed on the removal, death, or resignation of a law officer.

203. It is hereby enacted, that Section 5 Regulation 11 of 1826, of the Bengal Code shall be read—*Act I. 1845, Sect. 1.*

Reg. 11, 1826, see repeated

204. And it is hereby enacted, that from and after the passing of this Act any person may be appointed to be a Hindoo or Mahomedan law officer in any of the Courts of justice under the Presidency of Fort William in Bengal, who shall have successfully passed through such an examination as the Government of the said Presidency shall from time to time prescribe.—*Ibid, Sect. 2.*

Appointment of H and M law officers

205. Under the orders of Government, dated the 16th instant, the instructions addressed to Lieutenant Colonel Riley, Examiner of Candidates for the situation of Law Officers, together with the forms of certificates therein alluded to, are circulated for general information. From the Under Secretary to the Government of Bengal, to the Secretary of the Law Examination Committee, under date the 16th July, 1845.—With reference to my letter, No. 840, of the 14th May last, I am directed to request that the future examination of candidates for the situation of Hindoo or Mahomedan law officer, may be conducted by yourself and the pundits of the Hindoo College for Hindoos; and in like manner by yourself and the Mahomedan law professors of the Muddrusa for Mahomedans, as proposed in your letter of the 22d April last, No. 27. The certificates granted to passed candidates will be in the forms A. or B., prescribed in the appendix to Regulation 11, 1826, modified as follows, and attested with your signature as Examiner of Candidates for the situation of Law Officers.—*Appendix A.*—"I hereby certify

Mode in which the future examination of candidates for the situation of law officers is to be conducted

Certificates to candidates



that at an examination held at the Presidency of Fort William on the ——— according to the provisions of Regulation 11 of 1826, and Act V. of 1845, A. B. was found to be qualified by his eminent knowledge of the ——— law to hold the office of ——— Law Officer in any of the established Courts of judicature. This certificate has been granted to the said A. B. under the seal of the ——— College, this ——— day of ——— in the year of ——— corresponding with the ———. (Signed) C. D., *Examiner of Candidates for the situation of Law Officers*—Appendix B.—“I hereby certify that having duly considered the proceedings held on the examination of A. B., conducted according to the provisions of Clause 3, Section 5, Regulation 11, 1826, and Act V. of 1845, I consider the said A. B. to be duly qualified by the knowledge of ——— law to hold the office of ——— Law Officer in any of the established Courts of judicature. This certificate has been granted to the said A. B. under the seal of the ——— College, this ——— day of ——— in the year of ——— corresponding with the ———. (Signed) C. D. *Examiner of Candidates for the situation of Law Officers*.”—*Civ. Ord.* 25th July 1847.

Rules to be observed by a provincial, zillah, or city court on sending a case for the removal of a law officer on the ground of misconduct, neglect of duty, or incapacity.

206 Whenever a Provincial, Zillah, or City court may see cause for the removal of a law officer or *cavee* on the ground of any misconduct, or neglect of duty, experienced in capacity or other disqualification, such court shall report the circumstances of the case with its opinion on the subject to the Sudder dewanny adawlut, who will pass such order on the report so made as may appear to be proper, or will call for any additional information, or direct any further enquiry, which the nature and circumstances of the case may require. — *Reg.* 8, 1809, *Sec.* 1, *Cl.* 2.

Court of S. D. A. empowered to confirm the appointment, removal, and resignation of the law officers of the provincial, zillah, and city courts, and the *cavees* of cities, towns, and pargannahs.

207 The Court of Sudder dewanny adawlut is empowered to confirm the appointment, removal, and resignation of the law officers of the Provincial, Zillah, and City courts, and of the *cavees* of cities, towns, and pargannahs, on receiving the reports prescribed by Sections 5, 6 and 9, Regulation 5, 1804, with the following modification of Section 6 — *Ibid.* *Cl.* 1.

C. O. 2d March 1838, applicable to law officers.

208 The same rules are to be considered applicable to law officers, with advertence to the Circular order, No. 5, 23d March, 1838, regarding the clerks of the Criminal courts.—*Civ. Ord.* 26th March 1841.

Deduction of salary when law officers are absent on leave.

209 The Government have been pleased to sanction the adoption, in regard to law officers absent on leave, of a rule similar to that which holds in the case of Native Judges, viz. a deduction of one-half the fixed salary in the event of absence at any other period than the regular vacations, for absence during which no deduction is to be made.—*Civ. Ord.* 26th Nov. 1841.

Manner in which application for legal opinions must be made by the uncovenanted judges to law officers.

210. I am desirous to inform you that all applications to the Mahomedan and Hindoo law officers, for legal opinions in civil suits pending in the courts of the uncovenanted Judges should be made to them direct, by roobukaree, and not by perwannah.—*Civ. Ord.* 8th July 1842.

[The rules regarding the purchase or possession of landed property by the ministerial officers of the Zillah and City courts, given in Section II. of this Chapter, page 114 are applicable to law officers.]

## SECTION XIV.

*Civil Action against Law Officers for Corruption, Extortion, or Embezzlement.*

211. The rules prescribed in Section 9, Regulation 13, 1793, respecting charges of corruption or extortion lodged against the Native ministerial officers of the Civil and Criminal courts, are to be held applicable to charges of a similar nature that may be preferred against the Hindoo or Mahomedan law officers of the several courts, with the following qualifications.—*Reg. 12, 1793, Sect. 8, Cl. 1. Cid. and Cong. Prov. Reg. 11, Sect. 8, Cl. 1.*

Courts how to proceed in charges of corruption or extortion, that may be preferred against law officers

*Those provisions will be found in Section III of this Chapter, all the rules of which are applicable to law officers.*

212. No decree passed by any Zillah or City court, or any Provincial court of appeal, adjudging a Hindoo or Mahomedan law officer guilty of corruption or extortion, shall be carried into execution, in the event of the law officer against whom such decree may be passed, appealing from the decree and giving the securities required by Section 12, Regulation 5, 1793, and Section 10, Regulation 6, 1793, in cases of appeals from decisions for sums of money passed by those courts respectively, and the execution of which they are empowered to suspend upon such securities being given.—*Reg. 12, 1793, Sect. 8, Cl. 3. —Cid. and Cong. Prov. Reg. 11, 1803, Sect. 8, Cl. 3.*

Cases in which decrees passed by the provincial courts, or the zillah or city courts on such charges, are not to be enforced

213. The Zillah and City courts are to enforce by the usual process, all decrees that they may pass adjudging their law officers guilty of corruption or extortion, which may not be appealed against within the limited time, and transmit copies of the decrees to the Governor General in Council.—*Reg. 12, 1793, Sect. 8, Cl. 4.—Cid. and Cong. Prov. Reg. 11, 1803, Sect. 8, Cl. 4.*

Cases in which the zillah or city courts are to transmit decrees adjudging their law officers guilty of corruption or extortion to the G. G. in C.

214. The Sudder dewanny adawlut is to transmit to the Governor General in Council, a copy of every decree which they may pass adjudging a law officer of any Civil or Criminal court guilty of corruption or extortion, within one week after it may be given.—*Reg. 12, 1793, Sect. 8, Cl. 6.—Cid. and Cong. Prov. Reg. 11, 1803, Sect. 8, Cl. 6.*

S. D. A. to transmit such decrees to the G. G. in C.

215. When a Provincial court of appeal, or a Zillah or a City court, shall adjudge a charge of corruption or extortion, that may have been preferred against any law officer, not to be proved, and the prosecutor shall not appeal from the decree within the limited time, the court is to transmit a copy of it to the Governor General in Council. The Sudder dewanny adawlut, within the abovementioned period are to transmit to the Governor General in Council, copies of all decrees which they may pass, whereby any charge of corruption or extortion that may have been preferred against any law officer may be adjudged not proved.—*Reg. 12, 1793, Sect. 8, Cl. 8.—Cid. and Cong. Prov. Reg. 11, 1803, Sect. 8, Cl. 8.*

All final decrees not judging such charges not proved, are to be transmitted to the G. G. in C.

216. The Governor General in Council, upon the receipt of any decree adjudging a law officer of a Civil or Criminal court guilty of corruption or extortion, which may be

Power reserved by the G. G. in C. in cases of law officers

being convicted of corruption or extortion transmitted to him under this section, reserves to himself the power of dismissing the offender from his office, or of both dismissing him from his office, and declaring him incapable of exercising any employment under Government. The Governor General in Council, likewise reserves to himself the power of suspending any law officer against whom a charge of corruption or extortion may be preferred, until a final decision shall be passed on the charge, whenever it may appear to him expedient, either upon the representation of any of the Courts of judicature, or in consequence of any other information which may come before him. - *Reg. 12, 1793, Sect. 8, Cl. 7. Civil and Comp. Prov. Reg. 11, 1803, Sect. 8, Cl. 8.*

*The whole of Regulation 12, 1793, is extended to Benares by Regulation 11, 1795.*

*The same rules are enacted regarding the criminal prosecution of law officers which apply to similar charges against ministerial officers vide Section IV, of this Chapter.*

## SECTION XV

### *Pensions to Public Servants.*

*Rules relative to the grant of superannuation pensions to subordinate officers in the Civil Department, dated 4th January, 1831.*

217. 1st. Superannuation pensions will be granted only to the superior classes of public servants indicated in the annexed list. Inferior servants, sowars, armed or organized peons, including jemadars, and other ranks, lascars,\* boatmen, artificers, labourers, and menials, are to have no claim to such provisions.

218. 2d. With the exception of Native Judges and law officers, the applicant must have been employed in the public service for a period of at least twenty years.

219. 3rd. The public servant whatever may have been the period of his service, must be incapacitated for further employment, by old age, protracted ill health, loss of sight, or other bodily or mental infirmity.

220. 4th. The character, conduct, and past services of the public servant must be favourably certified by the officer or officers under whom he may have been employed, and must appear to be such as to entitle him to the favourable consideration of Government.

221. 5th. Whenever it may be judged expedient to grant a pension to a public officer whose case may come within the foregoing provisions, the amount of the pension shall be limited as follows:

222. *First.* If the period, during which the individual may have been actually employed in the public service shall be more than twenty years, but less than thirty years, the amount of the pension shall not exceed one-third of the monthly salary or authorized official allowances of such individual, calculated on an average of five years previously to the date of the application for such pension.

223. *Second.* If the period of actual service shall have been thirty years or upwards, the

\* Native seamen in the Marine or Pilot establishments at this presidency are not included within the provisions of these rules.

amount of the pension shall not exceed one half of the salary or authorized allowances of the individual calculated in the manner above stated.

224. *Third.* For law officers and Native Judges, the period of fifteen years shall be substituted for that specified in clause *first*, and twenty-two years for the terms mentioned in the *second* clause. Period of pensions for law officers and native judges

225. *Fourth.* The rates of pensions shall be fixed on a graduated scale, within the prescribed limitations, with reference to the responsibility and arduousness of the employment, the degree of merit of the individual, and the nature and length of his service. The rates of pensions to be on a graduated scale

226. 6th. A pension will hereafter be granted by Government to the family, or any member of the family of a deceased public servant, only when such servant shall have been killed in the execution of his public duty or shall have died in consequence of wounds or accidents sustained therein. Pensions to the family of a deceased public servant

227. 7th. Should cases arise, which are not sufficiently provided for in these rules, or in which from special circumstances, Government may be pleased to deviate from them in favour of a claimant to a pension, such pension shall be considered only as temporary and provisional, until the grant shall have received the sanction of the Honourable the Court of Directors. In cases of deviation from these rules, the pension will be temporary, till sanctioned by the C. of D.

228. 8th. Whenever an application may be made to Government with a view of obtaining the grant of a pension, in favor of any officer employed in the public service, the application shall contain full and specific information on the following points. What particulars the application for pension will contain

229. *First.* The name, class or caste, age and proposed place of residence of the individual, for whom the pension may be solicited; the situation in which he may be employed at the time when the application may be made, the total period during which the individual may have been employed in the public service, and the various official situations, in which he may from time to time have been so employed. Idem

230. *Second.* The monthly amount of the salary or the official allowances of the individual in question on an average of five years previously to the date of application. Idem

231. *Third.* The causes by which the individual may have been rendered incapable of discharging any longer the duties of his office, whether by extreme old age, protracted illness, loss of sight or other bodily or mental infirmity. Idem

232. *Fourth.* His general character, conduct and past services in the official situations which he may have held. Idem

233. 9th. If the officer making the application shall be unable from his personal or official knowledge to supply the whole of the specific information above required, he shall call upon the individual in whose favour the application may be made, to furnish a written statement (to be verified, by his oath or solemn declaration if required) on such of the points above noticed as may be necessary. Cases in which the applicant must give a written statement and verify it on oath

234. 10th. If the individual shall be rendered incapable of further service by protracted illness, loss of sight, or other bodily or mental infirmity, a medical certificate to that effect shall be also transmitted with the application. Cases in which a medical certificate must be transmitted

235. 11th. Each application for a pension under the foregoing rules shall be made by the head of the office, under whom the individual recommended to be pensioned may be employed. Through whom the application for a pension is to be made.

ployed, in a letter addressed to Government, and accompanied by a register on a separate sheet of paper in the form hereto annexed.

Register of an application for a Supernumeration Pension from the Establishment of ----- preferred under the rules  
passed by Government under date -----.

[illegible]

Life as of potentials  
now to be established  
and reported

236 12th. Lapses of pensions shall be communicated to the Civil Auditor as soon as possible after the occurrence, and it shall be the duty of the several officers in charge of the series from which pensions are paid, to appoint a proper person of their establishment to report all lapses to them, and along with themselves be responsible to Government for the fulfilment of this rule.

Cases in which an amount of pension has more than six months to be payable

237 13th. No pension shall be payable in arrear for a period exceeding six months without the express sanction of Government, obtained through the Civil Auditor, unless the cause of the suspension of payment shall have been the neglect, order or act of some public officer and beyond the control of the pensioner when the Civil Auditor, on a reference being made to him, shall exercise his discretion in passing arrears for payment, or submit a representation of the case for the information and orders of Government as he shall consider proper.

The vigilant control to be exercised by the civil auditor in all pension cases

238 11th It shall be the duty of the Civil Auditor to exercise a vigilant control over this class of pensions as over all others, and with that view to bring to the notice of Government all instances, in which in the granting of superannuation pensions, any of these rules may be departed from, unless he shall be distinctly informed that a special exception has been made in the individual instance.

Statement to be  
submitted annually by  
the civil auditor of  
pensions

239. 15th. It shall further be the duty of the Civil Auditor to lay before Government at the end of each official year, a statement exhibiting a comparison between the amount of pensions that have lapsed, and the amount of pensions granted during the year; and as a check against the fraudulency or continuance of pensions beyond the actual term of the pensioners' lives that officer shall from time to time compare the periodical decrement of life among the pension-

of each year, with the usual duration of life, and where lapses do not occur, in the proportion that might be anticipated, it shall be his business to institute such enquiries as may appear necessary to ascertain whether and in what particular instances fraud has actually been committed, and to submit to Government the result of his investigation.

240. His Excellency the most Noble the Governor General in Council has been pleased to determine as a general rule, that persons making applications for pensions under the resolutions passed by Government in this department, under date the 1st October last, shall verify the facts stated in their memorials by affidavits before a Magistrate — *Civ. Ord. 21st April 1820.* Applicants for pensions must verify their statements by affidavits.

241. *List of the several classes of subordinate officers in the civil department, who under the foregoing rules are considered to have eventual claims to superannuation pensions from Government* List of those who are claimants for annuation pensions

Registers, head clerks and accountants.

Indexers, examiners, readers.

Librarians, record keepers

Translators, interpreters

English and Native writers, moon-bees, jowab-nuvers.

English and Native accountants, mohurrars, moostusddee, gomastahs, karkoons if drawing more than ten rupees.

Head treasurers.

Head Native revenue officers, sentshtadars, dewans, head Native district revenue officers, telasehdar, amildars, jeshkars, ameen.

Heads of districts, Police daregahs.

Law officers, moodyees, cizees, panchits, mooffees.

Native Judges, Sudder Ameen, Moonsiffs, head executive officers of the courts, nazims.

## SECTION XVI.

*Vakeels in the Courts of the Zillah Judge, the Principal Sudder Ameen, and Sudder Ameen — their Appointment — Language to be used.*

242. And it is hereby enacted that the office of pleader in the courts of the East India Company shall be open to all persons of whatever nation or religion, provided that no person shall be admitted a pleader in any of those courts unless he have obtained a certificate in such manner as shall be directed by the sudder courts, that he is of good character and duly qualified for the office, any law or Regulation to the contrary notwithstanding.—*Act I. 1846, Sect. 4.* The office of pleader open to all who have obtained a certificate

243. The Court are pleased to publish, for general information, the annexed resolution this day passed by them regarding the examination of candidates for the office of pleader in the Company's Courts:—*Resolution.*—With reference to the provision of Section 4, Act I. 1846, that “no person shall be admitted a pleader in any of the courts of the East India Company, unless he have obtained a certificate, in such manner as shall be directed by the sudder court, that he is of good character, and duly qualified for the office,” the Court resolve as follows — *Civ. Ord. 17th July 1846.* Mod. of examination of candidates for the office of pleader

Candidate must present the same testimonials as are required of moonsiffs

244. No person shall be admitted to an examination, with a view to his qualifying as pleader in any of the courts of the East India Company, without presenting the testimonials as to character and acquirements, required from candidates for moonsiffships.—*Ibid*, Rule 1.

The divisional committees of examination, when to meet & how to be composed

245. The divisional committees for the examination of candidates for moonsiffships, shall form a committee of examination for passing candidates for pleaderships in any of the Civil courts within the division, and shall hold an examination on the 1st February of each year. The Judge, Magistrate and Principal Sudder Ameen in each zillah shall in particular cases, and with the previous sanction of the Sudder dewanny adawlut, form a similar committee of examination for passing candidates, at any other time than that fixed for the annual examination.—*Ibid*, Rule 2.

A system of marks to be adopted

246. A system of marks shall be adopted, and the value of all the questions shall be assumed at 100. Such candidates as shall not obtain 60 of these shall be rejected, while those who get 60 and not more than 75 shall receive a certificate to enable them to practise in a Moonsiff's court. The attainment of not less than 75, nor more than 85 marks, shall entitle the candidate to a certificate as pleader in the court of Sudder Ameen, and of more than 85 marks to a certificate of qualification as pleader in that of the Principal Sudder Ameen and Judge.—*Ibid*, Rule 3.

If the holder of a certificate in an inferior court, may be allowed to practise in a higher court

247. The holder of a certificate as pleader in an inferior court may, by obtaining the requisite number of marks, at any subsequent examination, receive a certificate to practise in such court of a higher grade, as the number of his marks may entitle him to.—*Ibid*, Rule 4.

The pleader in a higher court eligible for the office in a lower court

248. The holder of a certificate to plead in a higher court, shall be eligible for the office of pleader in a lower court on application.—*Ibid*, Rule 5.

A certificate granted in one district, valid in other districts.

249. A certificate granted in one district shall entitle the holder of it to obtain a pleader-ship in another district, in the grade of court for which he may have passed.—*Ibid*, Rule 6.

Those who possess moonsiffs' diplomas, but not the office, may be pleaders in the Sudder or other courts. But the Sudder may admit only one to plead at its bar

250. Persons who being in possession of diplomas are eligible for the office of Moonsiff, but not in employment as such, shall be entitled on application to obtain a pleader's certificate to practise either in the Sudder, or in any of the zillah courts. But the Courts of Sudder dewanny adawlut may admit to practise as pleaders before them all such persons as may satisfy them that they possess the necessary qualifications for the office.—*Ibid*, Rule 7.

Rules applicable to the examination of candidates for pleaderships

251. Rules 2, 3, 5, 6 and 10, dated 4th August, 1840, and Rules 1, 2, 3, 6 and 7 with exception of the last clause, beginning "and at the same time forward, &c." and 9-14 of the rules subsequently issued (vide *Government Gazette*, dated 16th March, 1841, and page 125-127, volume 3, Circular orders Sudder dewanny adawlut) shall be applicable to the examination of candidates for pleaderships.—*Ibid*, Rule 8.

Language to be used in pleadings in the civil court of 24-pargannas

252. The following notification is published for the information of parties to suits in the court of the Civil and Sessions Judge of the 24-Pargannas. When pleaders who understand the English language are employed by both parties to a suit, it shall be at the discretion of the Judge to direct that oral pleadings (if such pleading is necessary) be conducted in that language and it is to be understood that unless the pleaders of both parties are fully competent to argue the oral pleadings (if such are necessary) in English, the proceedings must be conducted altogether in the Native languages.—*Vol. Judge, 24 Parghs. 29th March 1847.*

253. With reference to Section 5 of Act I. 1846, and the repeal of Regulation 12, 1833, the Court resolve to adopt the following rules, regarding pleading in English, which have been approved of by the Supreme Government, as signified by Mr. Secretary Bushby's letter of the 8th ultimo, No. 536, communicated by the Secretary to the Government of Bengal on the 31st idem, No. 1647.—*Resolution S. D. A 25th Sept 1846.*

Rules regarding pleading in English in the sudder court.

254. When pleaders who understand the English language are employed by both parties to a suit, it shall be at the discretion of the Judge, before whom the case is pending, to direct that the oral pleading be conducted in that language.—*Ibid. Rule 1.*

When pleaders who understand English are employed by both parties, the pleadings may be in English

255. When a party to a suit has once appointed a pleader, who can plead in English, a change of pleaders by such party shall be no bar to the Judge, before whom the case is pending permitting the pleader of the opposite party to plead in that language. *Ibid. Rule 2.*

If a pleader who can understand English be engaged and then changed, the pleader of the opposite party may be permitted to use English

256. Provided nevertheless, and it is hereby enacted, that every barrister of any of Her Majesty's Courts of justice in India, shall be entitled as such to plead in any of the sudder courts of the East India Company subject however to all the rules in force in the said sudder court, applicable to pleaders whether relating to the language in which the court is to be addressed or to any other matter.—*Act I. 1846, Sect. 5.*

Barristers of the crown courts may plead in the sudder court subject to all the rules in force.

257. In modification of that part of the second paragraph of my Circular letter of the 2d ultimo, which requires the Zillah and city Judges under Regulation 5, 1831, to report for the Court's confirmation, the appointment and removal of Native ministerial officers and vakeels, I am directed by the Court to inform you, that such report is not considered necessary, and that you are competent of your own authority, to appoint and remove such officers and vakeels; subject however to the control of the Court, or Government, when either may see occasion to interfere.—*Cor. Ord. Cal and West C. 13th April 1832.*

The judge competent to appoint vakeels, no report necessary

258. Persons who may hereafter be appointed to the office of vakeel in the Zillah and City courts, or the Sudder dewanny adawlut, shall receive a sunnud of appointment duly authenticated by the court, to which they may be respectively attached. This sunnud, which is not required to be written on stamp paper shall be drawn up according to the form No. 1 in the Appendix to this Regulation.—*Reg. 27, 1814, Sect. 4, Cl. 1.—Sunnud to be granted to vakeels.* In conformity with the provisions of Regulation 27, 1814, you, A. B. are hereby appointed to the office of pleader in the Sudder dewanny adawlut or in the Provincial court for the division of ———, or in the Zillah of City court of ———. You will not be liable to be removed from your situation so long as you may conduct yourself with propriety, and discharge your duty with zeal and integrity, under the rules contained in the Regulations which now are, or may hereafter be, in force.—*App. 1, Reg. 27, 1814.*

Pleaders to receive a sunnud from the courts to which they may be appointed.

The sunnud to be of a prescribed form

259. Whenever a vakeel may be dismissed from his office, or may die, or may resign his situation, his sunnud of appointment shall be recalled and cancelled by the court, to which such vakeel may have been attached.—*Reg. 27, 1814, Sect. 4, Cl. 2.*

And to be cancelled on the death, removal, or resignation of the pleaders

260. Kisheneh Nund Barajjah, formerly a vakeel of the court of the Moonsiff of Talmiah who has been dismissed, will not give up his sunnud of appointment as required by Regulation 27 of 1814, Section 4, but has made a futile pretence on being applied to for the same,

How a vakeel is to be dealt with who, after dismissal, refuses to give up his sunnud



and gone out of the way when again sought for that purpose.—*Reply of the Sudder Court.*—In the case cited you should summon the vakeel to attend at your court: and in the event of his neglecting to attend, or, attending, to deliver up his *sunnud*, you are competent to punish him for evasion of process, or contempt of court.—*Con.* 1093, *Cal. C.* 31st March, *West. C.* 21st April 1837.

Pleders to take an oath according to the prescribed form, or a solemn declaration in lieu thereof

261 Every vakeel previously to being allowed to practise, shall take and subscribe before the court to which he may be appointed an oath, drawn up according to the form No. 2 of the Appendix to this Regulation, or a solemn declaration in lieu thereof, under the provisions now in force, or any other provisions which may be hereafter enacted.—*Reg.* 27 1811 *Sec.* 5 *Cl.* 1. A. B. solemnly swear, that I will truly and faithfully execute the duties of pleader of the Sudder dewany adawlut, or the Provincial court for the division of ——— or the Adawlut of the Zillah or city of ———, to the best of my knowledge and judgment.—*App.* 2, *Reg.* 27 1811

Vakeels not allowed to plead in other courts than those to which they are attached

262 The vakeels attached to one court are not to be allowed to plead in any other court, but this rule is not intended to preclude the Zillah and city Judges from making such an allotment and distribution of the pleaders attached to their courts, as may from time to time appear convenient on a consideration of the civil business in their own courts, and in those of their Registers and of the Sudder Amceens.—*Reg.* 27 1811 *Sec.* 16

For vakeels may take an oath in lieu of the pleaders

263 The Zillah Judge may make such allotment and distribution of the pleaders attached to the court of the Sudder Amceens as may appear proper, and his orders are not open to appeal to the Provincial court.—*Con.* 593 6th May 1831

It is the duty of the court

264 The Court are of opinion that the practice of allowing the pleaders of the Zillah court to conduct suits as *mookhtars* in the Commissioner's court is objectionable for the reason stated by you, as well as because it is in variance with Section 16 Regulation 27, 1811, which provides, that the vakeels of one court shall not be allowed to plead in any other court, and then you are therefore competent to decline receiving *mookhtarnamahs* authorizing them to conduct suits in your [the Commissioner's] court.—*Con.* 602 14th Oct 1831

How such suit be pleaded

265 The Judges of the several Zillahs and cities will assign to the court of each Sudder Amceen such a number of the authorized vakeels as may appear necessary. The whole of the Regulations in force regarding the authorized vakeels of the Zillah and City courts shall be applicable to the authorized vakeels employed in the courts of the Sudder Amceens.—*Reg.* 23 1811 *Sec.* 72

What vakeels to practise in the courts of P. S. A.

266 It shall be competent to the Zillah and city Judge to authorize any of the vakeels of his court, or of those attached to the Sudder Amceens, to practise in the court of the Principal Sudder Amceen.—*Reg.* 5 1831, *Sec.* 18 *Cl.* 3.

A vakeel of the judges court appointed in many cases to practise in the court of P. S. A., does not become a pleader of that court within the meaning of reg. 5, 1831, sec. 18, et c.

267 The mere circumstance of a vakeel of the Judge's court being authorized by that officer, under the discretionary power vested in him by Clause 3, Section 18, Regulation 5, 1831, to practise in the court of a Principal Sudder Amceen, either in any case, or particularly in cases [such for instance, as those in which Government or its officers are parties,] cannot be considered as constituting such vakeel a vakeel of the Principal Sudder Amceen's court within the intent and meaning of Clause 1 of the same section, which prohibits the Principal Sudder Amceens from trying suits in which their vakeels are parties. [This prohibition has been

removed by Section 1, Act XXVII, 1838, the Construction, however, still applies to the vakeels of the courts of the Sudder Ameens.]—*Con.* 1149, *West. C.* 27th April, *Cal. C.* 18th May 1838.

268. A civil court cannot compel a pleader to receive a vakalatnamah from a party not a pauper.—*Rep. Sum. Cases*, 1st Aug 1842, p. 35.

A vakeel cannot be compelled to act for a pauper.

269. The Court having reason to believe that the provisions of Clause 3, Section 18, Regulation 5, 1831, and Regulation 12, 1833, have not been duly carried into effect, and that delay consequently takes place at the courts of the Principal Sudder Ameens and Sudder Ameens, in the disposal of the causes pending before those functionaries, direct me to inform you, that petitions of plaint may be received by you, agreeably to Section 2, Regulation 4, 1793, from any authorized agent, or from any duly empowered vakeel attached to the court of the Judge, the Principal Sudder Ameen, or the Sudder Ameen, and that, in order to expedite business, the Judge should encourage such petition or plaint being filed by the vakeels of that court to which under the provisions of Regulation 5, 1831, and Act XXV 1837, they will ordinarily be transferred for trial.—*Cal. Ord* 18th Dec 1839

Petitions of plaint may be received from any authorized mookhtar or vakeel

270. The Court are of opinion, that the Judge should also make such an allotment and distribution of the pleaders attached to the several courts, as may appear most convenient for the transaction of public business, and that, having made such distribution, the pleaders should be permitted to plead only in those courts to which they have been respectively nominated.—*Ibid.*

The judge will allot the pleaders to the several courts, where alone they will subsequently plead

The vakeels of the Principal Sudder Ameens and Sudder Ameens' courts are in fact vakeels of the Judge's court, appointed by the Judge under the provisions of Section 72, Regulation 23, 1814, and Clause 3, Section 18, Regulation 5, 1831, to practise in cases before the subordinate tribunals, and by the section and Regulation first cited, the whole of the Regulations in force regarding the authorized vakeels of the Zillah courts are applicable to the authorized vakeels employed in the courts of the Sudder Ameens.—*Con.* 802, *West. C.* 5th July, *Cal. C.* 2d Aug 1833

All the rules in force regarding the vakeels of the Judge's court are applicable to those of the S. A's court

272. The Judge of the Presidency Court concur in the opinion of the majority of the Judges of the Western Court, that the provisions of Regulation 12, 1833, authorize the employment by parties of more than one general agent for the conduct of suits and other business. The Court approve of the suggestion, that parties appointing more than one general agent be required to declare their responsibility for the acts jointly or severally done by such agents, in the discharge of their duties and will adopt the same as a rule of practice.—*Con.* 1210, *West. C.* 26th April, *Cal. C.* 10th May 1839.

Parties may appoint more than one special agent for their suits, but must be responsible for the acts of those agents

## SECTION XVII.

### Vakeels in those Courts—Dismissal.

273. In modification of that part of the second paragraph of my Circular letter of the 2nd ultimo, which requires the zillah and city Judges under Regulation 5, 1831, to report for the Court's confirmation, the appointment and removal of Native ministerial officers and vakeels, I am directed by the Court to inform you, that such report is not considered necessary, and that you are competent, of your own authority, to appoint and remove such officers and vakeels,

The judge competent to remove vakeels, no report necessary

subject however to the control of the Court, or Government, when either may see occasion to interfere.—*Civ. Ord. Cal. and West. C. 13th April 1832.*

The pleaders to be  
dismissed for certain  
acts of misconduct

274. Pleaders, employed in the several Courts of civil judicature, shall be liable to dismissal from their office whenever they may be guilty of encouraging or promoting litigious suits; of wilfully delaying the suits of their clients for their own advantage; of refusing or omitting, without sufficient cause to be shewn to the court, to carry on the suits of their clients, after having accepted a vakalatnamah; of demanding or accepting from their clients any fee, or sum of money, goods, effects, or other valuable consideration beyond the fees, which they are or may be authorized to receive under the Regulations; or of fraudulent practices, neglect, or other misconduct, in the discharge of their professional duty; or of gross profligacy or misbehaviour in their private conduct.—*Reg. 27, 1814, Sect. 6.*

Dismissal of suits  
by default, through  
the negligence of the  
vakeels

275. Instances having come to the notice of the Court in which suits have incurred dismissal on default, under the first section of Act XXIX 1844, owing to the negligence in not proceeding with the case of the vakeel of plaintiff or appellant, the Court draw the attention of the Civil courts to the following remarks and order.—*Civ. Ord. 2d Dec. 1842, par. 1.*

Extreme urgency  
of the law requiring  
the dismissal of suits  
on default

276. The Court observe the terms of Section 1 of the above Act, are very decided in their character, unqualifiedly declaring that a suit or appeal not proceeded with, for six weeks *shall, as of course, be dismissed*, no proceeding on the part of the court before which it may be pending, and no motion by the opposite party or otherwise, being needed. In other words, a suit, incurring such a contingency becomes of itself extinct, and at an end: the sole exception being where the plaintiff or appellant may by special application made *before* the expiration of the period named, have shewn to the court good and sufficient cause for granting further time. When therefore, a case may have been legally dismissed on default under the above law, no remedy remains (for the presiding Judge could, on review, pass no different order from the first,) save re-institution under Section 2, and when that is barred by any of the impeding causes recited in the Act,\* the suit is altogether lost.—*Ibid, par. 2.*

When such default  
occurs from the neg-  
ligence of the vakeel,  
his sumud must be  
withdwn, and can  
only be restored with  
the leave of S. D. A.

277. As these considerations make it imperative to attach so rigorous a penalty to proved instances of cases being in the above mode lost by reason of negligence and failure to proceed or duly represent their clients on the part of vakeels as shall prevent those persons from compromising or running the causes of their employers, the Court are pleased to resolve, that whenever such default shall be found, after due enquiry, to have been incurred from the culpable remissness and negligence of the plaintiff's or appellant's vakeel or mooktars, the vakeel's sumud shall be held to be *ipso facto* forfeited by such omission; and it shall not be in the power of the presiding Judge of the tribunal where default occurred to grant to such vakeel a new sumud, unless on sanction expressly obtained of the Sudder dewanny adawlut.—*Ibid, par. 3.*

Subordinate courts  
will report such neg-  
ligence of the vakeel  
to the judge

278. The subordinate judicial officers will immediately report to the zillah Judge the occurrence of any cases of the kind described in their own courts, with a view to his directing the dismissal of the vakeel.—*Ibid, par. 4.*

Indolence and in-  
attention of the plead-  
ers to be punished by

279. As connected with the subject, the Court take the opportunity of advertng to com-plaints which have been preferred to them by various uncovenanted judicial officers, with

\* On this point see Construction 1231

whom they have communicated, of the indolence and inattention of the pleaders practising in their courts, and of their inability, without the aid of superior authority, to control them. The Court direct that the several judicial authorities be careful, in future, to note instances of misconduct on their occurrence, and if so frequently repeated, as to impede the transaction of business to punish the offending parties by dismissal from office, or otherwise as the occasion may seem to demand.—*Cir. Ord 3d Jan. 1845, par. 4.*

280. The Court have not unfrequently had occasion to remark a disposition on the part of vakeels, attached to the local judicial tribunals, to mis-lead, by statements having little or no foundation in truth, the vakeels employed to conduct appeals preferred to the Sudder dewanny adawlut, and by imputing irregularity of procedure totally unconnected with the merits of the pending suit, to throw aspersions on the character of the subordinate judicial functionaries, who, on enquiry, have been fully exculpated from the charge.—*Cir. Ord 7th Aug. 1843, par. 1.*

281. It is desirable, that a practice so disingenuous and reprehensible, and so entirely useless as regards the claims and interests of the litigant parties should be discouraged, and the Court are accordingly pleased to notify, for general information, that any vakeel attached to a Zillah or any subordinate court, who may be hereafter detected in making mis-statements relative to the manner in which proceedings may have been conducted in these courts, in any case subsequently appealed to the Sudder dewanny adawlut, shall be liable to immediate dismissal from his situation. *Ibid, par. 2.*

282. The several civil Judges are directed to affix a copy of this Circular order in the Native Language in a conspicuous part of their court, and of every subordinate court in each district.—*Ibid, par. 3.*

283. The vakeels are required to use due precautions to ascertain the real names and the identity of persons, who may propose to employ them as pleaders: and any authorized vakeel, who shall hereafter receive and file a vakalatnamah from any person under a fictitious name, shall be liable to be dismissed from his office, provided however, that the Judge upon full enquiry into the circumstances of the case, and the Provincial court, on consideration of the Judge's report, shall deem him to be deserving of such punishment.—*Reg 27. 1814 Sect. 8.*

284. Any pleader, who under the preceding rules, may knowingly furnish an opinion of a nature evidently calculated to promote the institution of unfounded or litigious suits, or to discourage the amicable adjustment of dubious claims, shall be liable to be dismissed from his office; and if after furnishing such dishonest opinion he shall be employed as a pleader in the suit, his fees shall be liable to be forfeited by order of the Court, either to Government or to the party whom he may have wilfully misled by such opinion.—*Ibid, Sect. 20. Cl. 6.*

285. A pleader dismissed from his situation by a Judge cannot be permitted to practise again by such Judge's successor, without sanction having been obtained from the Sudder dewanny adawlut to review the order for dismissal.—*Con. 1082, West. C 31st March, Cal. C. 14th April 1837.*

286. The conduct of a vakeel engaged in a case before a Principal Sudder Ameen, even

dismissal, or otherwise.

The practice of vakeels making mis-statements regarding the management of suits in the lower courts to asperse the character of the superior judges, to be punished with immediate dismissal.

Idea

Idea

Pleaders accepting vakalatnamas in fictitious names shall be dismissed.

Pleaders liable to penalties for wilfully furnishing dishonest opinion.

A pleader dismissed by a judge cannot be readmitted by his successor without the sanction of S. D. A.

Conduct of a vakeel

in a suit before a P. S. A. above 5000 rs. cognizable by the J. exceeding 5000 rupees in value, is cognizable by the zillah Judge and not by the Sudder dewanny adawlat.—*Rep. Sum. Cases, 28th May 1844, p. 58.*

## SECTION XVIII.

*Subjects to these Courts: Manner Penalties—Fines*

Pendues in qua  
fines, percents, &c.  
required to be paid on  
unstamped paper, or  
on stamped paper, or  
on unstamped paper.

To be imposed and  
levied by the court.

In  
Pendues in qua  
fines, percents, &c.  
required to be paid on  
unstamped paper, or  
on stamped paper, or  
on unstamped paper.

287. Every vakool, or authorized pleader or mooktar attached to any Court of judicature who shall present for the purpose of being filed or recorded in any court or kutcherry any paper, petition, or any deed, instrument, or document, requiring to be stamped by the rules of this Regulation, on unstamped paper or on paper not bearing the proper stamp, and not duly endorsed, or on paper bearing a counterfeit stamp, unless signed and endorsed by a vendor as prescribed, shall forfeit five times the amount of the stamp which ought to have been used, or five times the difference in case of the use of improper stamps, as prescribed in Section 13 of this Regulation. The said fine shall be imposed and levied by the presiding officer of the court in which the said vakool or mooktar may be practising, and the amount shall be remitted to the Collector with a copy of the proceedings or order imposing the fine.—*Act 10, 1829, Sect. 18, Cl. 1.*

288. It shall further be competent to the Collector, or other officer, exercising similar powers, on discovery of any irregularity of the above description not noticed on the proceedings of the court, to move the court by petition, to be presented to the Judge of the zillah within whose jurisdiction such vakool, or other person so offending, may be practising, for infliction of the above fine when entered in any court within the zillah or city jurisdiction, or if the vakool so offending be an officer of the Provincial court or Sudder dewanny adawlat, then the Collector shall make application to those courts respectively through the vakils of Government attached thereto, and the case shall be tried and adjudged by the zillah Judge or by the Judges of the superior courts, and then determine respectively as to whether the penalty has been incurred or not, shall be final.—*Id. Cl. 2.*

Courts have no  
jurisdiction to  
impose or levy the  
fine, but the  
Collector has  
power to do so.  
—*Act 10, 1829, Cl. 18.*

289. I have the honour to request the instructions of the Court whether I am competent to remit the penalty on the 18th Regulation 10, 1829, being assured that a stamp of authenticity is affixed to the papers, and the circumstances which leave no doubt that the filing party was ignorant of the deficiency of the value.—*Reply*—I am directed to acknowledge the receipt of your letter No. 7 of under date the 15th ultimo, with its enclosure, from the officiating Judge of zillah Sydnah and to state that the Court concur with the Calcutta Court in the opinion that Section 18, Regulation 10 of 1829, gives no discretion to the presiding officer, but that he is bound in all cases to levy the fine, then imposed, from any vakool or authorized pleader or mooktar who may file any paper contrary to the provisions of that enactment.—*Can. 1120, Cal. C. 15th Dec. 1837. West. C. 12th Jan. 1838.*

Petitions of plaint  
and of appeal, returns  
and special, and ap-  
plications for a review  
of judgment, included  
in reg. 10, 1829, see 18.

290. It is hereby notified, for the information and guidance of all the courts, that the Courts of Sudder dewanny adawlat at Calcutta and Allahabad have ruled that, by Section 18, Regulation 10, 1829, any vakool or authorized pleader, or mooktar who shall present any paper, petition, or any deed, instrument, requiring to be stamped, on unstamped paper, or paper not

bearing the proper stamp, must forfeit five times the amount of the stamp which ought to have been used in the one case, or five times the difference in the other; that by Construction No. 1120, the Civil courts having no discretion left to them, must in all cases levy the fine prescribed by the section cited from any vakeel, authorized pleader or muakhtar, appointed under Regulation 12, 1833, who may file any paper contrary to the provisions of that enactment; and that from the very comprehensive terms employed, petitions of plaint, and of appeal, regular and special, and applications for review of judgment are included in those terms.—*Civ. Ord.* 20th Jan. 1843.

The penalty must be levied from vakeels for any breach of the stamp regulations

291. It has been ruled by the Court of Sudder dewanny adawlut that the Native judicial authorities are competent to proceed, of their own power, and without previous reference to you, to the realization, by the usual process, of any fines imposed by them under the rule contained in Clause 1, Section 18, Regulation 10, 1829, subject to the usual course of appeal.—*Civ. Ord.* Cal and West. C. 7th June 1839.

N judges may of their own power realize those fines

292. I am directed by the Court of Sudder dewanny adawlut to request that you will exert yourself to the utmost in securing the due observance of the several provisions of the stamp Regulations in all suits and matters brought before your court [and the inferior courts in your district].—*Civ. Ord.* Feb. 1832

A due observance of the stamp regulations is enforced.

293. The zillah and city Judges are empowered, without the previous sanction of the Provincial court, to suspend from his office any pleader attached to their courts, who may be guilty of any gross act of fraud or misconduct. In such instances it shall be the duty of the Judge to report the circumstances of the case, with as little delay as possible, for the information and orders of the Provincial court.—*Reg.* 27, 1811 *Sect.* 11.

Pleaders attached to zillah and city Courts may be suspended from office without the previous sanction of the provincial court. Such cases to be immediately reported.

294. The parties in a cause are authorized to prosecute their respective pleaders in the Civil courts of judicature for any damages or money which they may have sustained from any breach of the Regulations on the part of their pleaders, or from any fraudulent conduct or malpractices committed by their pleaders regarding the same.—*Ibid.* *Sect.* 11, *Cl.* 1.

In what cases the pleaders are liable to be prosecuted in the civil court by their clients

295. If a pleader shall fail to attend in court on any day fixed for the transaction of civil business and shall omit to notify in writing the reasons why he is absent, in consequence of indisposition or other sufficient cause, he shall be authorized to impose on such pleader, a fine for the first offence, not exceeding the sum of five rupees, and for the second offence, not exceeding the sum of ten rupees. If such pleader shall be guilty of a similar offence a third time, he shall be liable to be removed from his office.—*Ibid.* *Sect.* 11, *Cl.* 1.

Procedure for pleaders, detecting themselves from court without notifying the cause of their absence

296. The terms of Section 32, Regulation 7, 1793, (relating to fines of pleaders for non-attendance,) were not meant to restrict the Civil courts from imposing a less fine than the amount stated, in cases wherein they may consider a less fine adequate.—Ruled by Sudder dewanny adawlut, on a reference from the Patna Provincial court.—*Ann.* 18, 8th Feb. 1806.

The toll fine for non attendance must not be imposed

297. If any pleader shall be guilty of disrespect to the court, in open court, the court is empowered to impose a fine upon him, not exceeding the sum of one hundred rupees.—*Reg.* 27, 1811, *Sect.* 11, *Cl.* 2

Pleaders may be fined 100 Rs for disrespect to the court

The orders of zillah and city judges, and registers imposing fines on pleaders to be conclusive

298. All orders imposing fines on pleaders, which may be passed by the Judges or Registers of the Zillah and City courts, in conformity with this Regulation shall be final; and the amount of the fines shall be levied either by a deduction from the fees, which may become due to the offender, or by the process which is prescribed for the execution of decrees. Provided however that if a zillah or city Judge shall in any particular instance, see reason to believe, that a fine has been imposed by a Register on insufficient grounds, or that the amount of such fine is disproportionate to the offence, it shall be competent to the zillah or city Judge to remit or modify the fine at his discretion, and the order of the zillah or city Judge, in such cases, shall be conclusive.—*Ibid.* Sect. 15, Cl. 2.

Fines imposed on pleaders by P. S. A. or S. A.

299. And it is hereby enacted, that whenever a pleader has rendered himself liable to a fine in the court of a Principal Sudder Ameer or Sudder Ameen, it shall be competent to such Principal Sudder Ameen or Sudder Ameen to impose such fine, provided that an appeal from all orders imposing such fines shall lie to the zillah or city Judge, whose decision thereon shall be final.—*Act I. 1846, Sect. 10*

Plead is to be censured and eventually dismissed for breach of the preceding rules

300. The courts will carefully point out to the notice of the vakeels such parts of the pleadings as are evidently irregular, irrelevant, or otherwise objectionable, and shall record their censure of any vakeel whose conduct in opposition to the preceding rules may in any particular instance, demand such animadversion. If notwithstanding such recorded censure, a vakeel shall again be guilty of similar misconduct, he shall be liable to forfeit in each instance the amount of the fee to which he may be entitled in the suit, or to such other fine to Government not exceeding twenty rupees as the court may deem it proper to impose.—*Reg. 27, 1844 Sect. 9, Cl. 3*

## SECTION XIX.

### *Vakeels, in those Courts—their Duties*

Vakeels required to examine and verify the pleadings before they are filed

301. The vakeels are hereby enjoined not to file any plaint, answer, or other pleading, without previously ascertaining that such pleading has been duly prepared in conformity with the Regulations; that it contains no unnecessary repetitions of former pleadings, no terms of personal abuse or reproach against the opposite party, his vakeels, witnesses, or other persons, and no groundless imputations on any Court of justice or public officer; but that it contains such matter only as is apparently material and relevant to the suit. Every pleading filed by an authorized vakeel, shall be signed by him in testimony of his having considered and approved its contents.—*Reg. 27, 1844, Sect. 9, Cl. 1.*

A P. not bound to reveal the secrets of his client

302. A pleader entrusted with the secrets of a cause by his client, is not bound to give evidence of any information given to him in confidence, in virtue of such trust.—*Rep. Sup. Cases, 4th July 1844 p. 51.*

Or to exhibit his instructions.

303. A pleader cannot be required to exhibit the instructions of his client.—*Rep. Sup. Cases, 16th Sept. 1846 p. 96.*

304. In order that the expence, trouble, and inconvenience frequently experienced by filing irrelevant exhibits, and by summoning useless witnesses, may be avoided, the vakeels are hereby further required to examine the documents, which their constituents may propose to exhibit in proof of their claims, previously to their being filed in court: and to ascertain from their constituents, previously to summoning any witnesses, the specific points which such witnesses are expected to prove by their testimony.—*Reg. 27, 1814 Sect 9, Cl. 2.*

Pleaders to examine exhibits previously to their being filed on the part of their clients.

And not to summon witnesses without previously ascertaining to what points their testimony is required.

305. The Sudder dewanny adawlut and the several Provincial courts will, at all times exercise their discretion in removing from his office any pleader of their respective courts, who may be guilty of any of the acts above-mentioned, or who may be otherwise deemed unfit for the situation. — *Ibid, Sect 10, Cl 1.*

The S D A and the prov etc authorized to dismiss the pleaders of their respective courts

306. Whenever a zillah or city Judge shall be of opinion that a vakeel, attached to his court, or to that of a Register, or any of the Sudder Amceens, is unfit for the situation on consequence of his having been guilty of any of the acts mentioned in the preceding sections, or that is otherwise disqualified for the office of pleader, the Judge shall report the circumstance of the case, together with his own opinion upon it to the Provincial court, who will pass such orders on the case as may appear to be proper, or will call for any additional information, or direct any further enquiry that the nature and circumstances of each case may appear to demand. — *Ibid, Cl 2*

Misconduct or disqualifications of pleaders attached to the zillah and city etc, to be reported by the judges of those courts to the prov courts, who will pass such orders thereon as may be proper

307. Held on a reference from the Judge of Futtelpore, that money deposited in court as payable to a party, should never be paid to a vakeel, save under specified authority conveyed in the vakalatnamah, and that for any sums paid away in any other mode, the officers making the disbursement must be held personally responsible.—*Con. 1360, West C 5th Aug, Cal. C. 9th Sept. 1812.*

In what cases the client's money deposited in court is to be paid to the vakeel

308. The Court observe that under the provisions of Section 34, Regulation 27 of 1814, the vakeels, entertained in a regular civil suit, are required, without any additional fee to make all motions and do all acts which may be requisite relative to such suit, not only during the trial of it, but after a decision shall have been passed, until the final judgment shall have been enforced, and as the case which has given rise to the present reference, cannot be considered to have been finally disposed of by the zillah court, the decision having been pronounced *inchoate* and the case ordered to be tried *de novo*, the Court decide that the defendant's vakeel should be required to refund the amount paid to him, leaving it to the court who may eventually decide the case, to award to him such portion of the authorized fee as may appear an adequate remuneration for the trouble which he may have taken in the matter.—*Con. 1105, West. C. 8th Sept., Cal. C. 29th Sept. 1837.*

When a case goes back to re-trial, the pleaders must refund the fees received by them

The court deciding their cause will allot them such portion as appears an adequate remuneration

309. I am directed to acknowledge the receipt of a letter from you under date the 18th instant, requesting to be informed whether a vakalatnamah, executed by a decree-holder for the conduct of an original suit when pending in your court, is sufficient authority for the vakeel therein appointed to superintend the execution of the decree on its being confirmed in appeal. —In reply, I am directed to communicate to you the opinion of the Court, that the section of the Regulation quoted by you, (Section 34, Regulation 27, 1814,) is conclusive on the point in question, viz. that a vakalatnamah executed on the original institution of a suit, unless cancel-

The vakalatnamah, originally given unless cancelled, is operative till the final judgment is enforced.



led by the party or otherwise set aside, must be considered operative and in full force "until the final judgment shall have been enforced."—*Con. 852, West. C. 27th Dec. 1833, Cal. C. 17th Jan. 1834.*

The vakeel cannot, without a special power, receive the sums realized in execution of decrees

310. The Courts of Sudder dewanny adawlut for the Lower and Western Provinces notify, for general information and guidance, the fact of the incompetency of vakeels in suits to receive, without a special power, sums realized in execution of decrees. They observe that the powers conferred on a vakeel cease on the enforcement of the decree, that is, on payment of the money (if money be decreed) into court. Taking the money out of court is a subsequent and separate transaction, and should not be permitted to a vakeel, except where his vakalatnamah, by a special clause to that effect, or any separate instrument, may distinctly confer on him the authority to receive it.—*Civ. Ord 24th Sept 1842.*

Pleaders may be employed as arbitrators.

311. The Courts of civil judicature are hereby empowered to permit any of the authorized vakeels of their respective courts to be arbitrators in depending suits, subject to the several rules and provisions in force for referring suits to arbitration.—*Reg. 27, 1814, Sect. 19.*

Vakeels may be required to attest confessions.

312. The pleaders of the Civil court may be called upon to attest confessions before the Magistrates, and are liable to dismissal for refusing to do so.—*Con. 101, 23d April 1812.*

Pleaders to give written receipts for documents entrusted to them by their clients.

313. Pleaders are to give written receipts on unstamped paper for all accounts, writings, or documents, which may be delivered to them by their clients in the course of any suit, or process; if a pleader shall refuse to return such accounts, documents, or writings, the court upon a petition being presented to them for that purpose by the owners of the papers so withheld, shall cause them to be restored.—*Reg. 27, 1814, Sect. 36.*

Such petitions to be written on stamp paper, on what description, and what it is to contain

314. The petition of special appeal shall state distinctly the specific ground or grounds under clause first of this section, on which the special appeal is solicited, and it shall be presented either by the party in person, or by an authorized pleader of the court. In the latter case, the petition shall be signed by the pleader, who shall certify on the back of the petition, that he has duly considered the grounds stated for admitting a special appeal under clause first of this section, and believes them to be well founded and sufficient.—*Reg. 26, 1814, Sect. 2, Cl. 3.*

Vakeels prohibited from being employed as agents or mooktars in the foudaree courts of the zillah and cities

315. The authorized pleaders of the Zillah and City courts are hereby prohibited without obtaining the previous sanction of the Judges of those courts from officiating as agents, or mooktars in any prosecution, trial or proceeding before the Magistrates or their assistants. This prohibition however is not intended to apply to the cases of pleaders, who may be employed on the part of Government in conducting the prosecution of persons charged with criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorized to perform on the part of Government under the Regulations, which are now or may hereafter be in force.—*Reg. 27, 1814, Sect. 17.*

The regulations are to be exposed for public inspection, &

316. That the pleaders in the several courts as well as all other persons may have it in their power to render themselves acquainted with the Regulations enacted by the British

Government, there shall be kept, for public inspection, in the several Courts of judicature, printed copies of all such Regulations and of the translations in the Native languages, bound up with the annual indexes. Until the Regulations, which may be passed in each year are so bound up, the separate copies of each Regulation with the translations, which may be printed and circulated to the courts, are to be exposed as above directed. The Regulations are to be deposited upon a table expressly allotted for that purpose in some part of the court-room, and to lie for public inspection every day, Sunday excepted, during the ordinary hours of business, when the pleaders of the courts and all other persons are to be at liberty to refer to the Regulations, or to take copies or extracts from them in the court-room: on receipt of the translations of the Regulations in the country languages, the several Courts of civil justice shall cause the same to be publicly read in their cutcherries, and shall require the Native pleaders of their respective courts to take copies of any of these translations, which relate, directly or indirectly, to the administration of civil justice.—*Ibid*, Sect. 40.

317. The established pleaders of the Zillah and City courts shall not be required to attend the trial of summary suits at a distance from the fixed station of the Judge or Register.—Such suits shall be tried in the presence of the parties, or any persons whom they may duly appoint to be present at the trial on their behalf.—*Reg. 2, 1821, Sect. 10, Cl. 3.*

Pleaders of the courts exempted from attending the trial of summary suits when conducted at a distance from the fixed station of the Judge or register

## SECTION XX

*Vakeels in those Courts—Engagements between Client and Vakeel—Change, Resignation or Death of Vakeels.*

318. No part of this Regulation is to be construed to prohibit or to prevent any individual from appearing and pleading his own cause in person, in any of the Courts of civil judicature, without employing an authorized pleader.—*Reg. 27, 1814, Sect. 38.*

Individuals not prohibited from pleading their own suits.

319. When a party in a cause may be desirous of retaining a vakeel for the prosecution or defence of any civil suit, he shall not be required to pay to such vakeel the retaining fee of four annas, heretofore prescribed, but he shall execute to him a vakalutnamah, constituting him pleader in the cause and authorizing him to prosecute or defend the suit, and further binding himself to abide by and to confirm all acts which such pleader may do or undertake in his behalf in the cause, in the same manner as if such party had been personally present and consenting; the party is to attest the instrument with his seal or signature, or with his mark if he cannot write, in the presence of two credible witnesses who are likewise to attest it in the same manner; and who are to attend the court and prove the vakalutnamah in all cases in which it may be judged requisite.—*Ibid*, Sect. 21, Cl. 1.

Retaining fee abolished.

Rules for the execution of a vakalutnamah.

320. A plaintiff, consenting, through his duly appointed vakeel, to the settlement of his suit in court by the statement on oath of the defendant, cannot object to a decree of court founded on such statement.—*S. D. A. Sel. Rep. 29th Aug. 1843, vol. 7, p. 131.*

Plaintiff cannot object to a decree founded on his consent to a settlement, by his vakeel.

A vakeel's application on behalf of his client to be considered sufficient authority

321. The vakeel of a judgment creditor having applied on behalf of his client, praying that certain property belonging to his debtor might be publicly sold to him at a specified sum if more was not bid for it; it was held by the Sudder dewanny adawlut, that the client was bound by such an application, notwithstanding his subsequent declaration that he had not authorized his vakeel to make it.—*Rep. Sum. Cases, 22d March 1812, p. 26.*

A mooktar may appoint a pleader and execute a vakalutnamah

322. I am desired to observe, that the question which has given rise to this reference seems to be simply as to the legality or otherwise of the practice of permitting *mooktars* to file vakalutnamahs, in suits wherein their principals are parties; and to acquaint you, that the opinion entertained by you on the subject, corresponds in every respect with the view which this Court have taken of it. The Court observe, that to execute *per alium*, [that other being duly authorized,] is to execute *per se*, and that the Regulations consider these acts as one and the same, as is clear from the more explicit wording of Section 13, Regulation 27, 1814, which prescribes the performance of certain acts to be done *by the party or his authorized agent*. Although the wording of Section 8, Regulation 7, 1793, is not different from that of Section 21, Regulation 27, 1814, yet, from the time of its enactment (two and thirty years ago,) vakalutnamahs executed by agents duly authorized have, by all the courts, been regarded as equally good and valid with those executed by the parties themselves. The Court therefore are of opinion, that it would be inexpedient to put a stop to a practice which has been sanctioned by universal usage, which is attended with much convenience to parties in suits, and which the Regulations in force do not appear to prohibit.—*Con 417, 28th April 1826.*

Vakalutnamahs and mooktanamahs are not verified on oath

323. The following rules of practice, which have been adopted by the Courts of Sudder dewanny adawlut are prescribed for the guidance of the Zillah courts and the courts subordinate to them. Vakalutnamahs, whether executed by principal, or their attorneys and agents, and mooktanamahs under the authority of which vakalutnamahs are executed, shall not hereafter be required to be verified on oath. The responsibility in regard to all such documents being properly and correctly executed shall rest entirely with the vakeels. The above rule does not apply to cases in which only mooktars or agents are employed. In all such cases the mooktanamahs shall be verified on oath as at present.—*Ct. Ord. 15th Sept 1843.*

What mooktanamahs must be thus verified

Vakalutnamahs to be written on stamped paper but not liable to the exhibit fee.

324. Such vakalutnamahs are to be written on the stamped paper prescribed in Section 18 Regulation 1, 1814, [Regulation 10, 1829,] but shall not be liable to the stamp duty on exhibits under Section 15 of that Regulation.—*Reg. 27, 1814, Sect. 21, Cl. 2.*

Pleaders after accepting a vakalutnamah are prohibited from being employed in the same cause against the party who may have so retained them

325. When a vakeel to whom a vakalutnamah may have been executed under the preceding section, shall consent to undertake the prosecution or defence of the suit, he shall affix his signature to the back of the vakalutnamah, together with the date on which such signature may be affixed; and shall thenceforward be precluded from being employed in the same cause against the party who may have so retained him.—*Ibid, Sect. 22.*

Parties may withdraw the management of a depending suit from their pleaders, and may appoint new pleaders in their room.

326. Any party in a suit, who may be dissatisfied with the conduct of his pleader, shall be at liberty at any stage of the trial previously to the decision, to withdraw the power delegated to his pleader and to appoint another vakeel to plead the cause. In such cases the party is to present a petition to the court, notifying that he has withdrawn the management of the suit from such pleader, and is to file a new vakalutnamah in the name of the pleader, whom he may appoint to carry on the suit; all acts however which may

have been done by the first pleader on the part of his client, previously to his having been dismissed, are to be held valid; on the conclusion of the suit, the court will exercise its discretion in awarding to the pleader first employed, any portion of the authorized fee to which he may appear justly entitled on a consideration of the trouble which he may have undergone, and the other circumstances of the case.—*Ibid*, Sect. 12. Cl. 2.

327. If a pleader should be unable to attend the court in consequence of indisposition, or other sufficient reason, he is to notify the same in writing to the court on unstamped paper, and the hearing of any cause, in which such pleader may be employed, is to be postponed to a future day, unless the party or his authorized agent shall commit the management of the cause to any other pleader of the court, or unless the party himself shall be present and willing to plead the cause in person. If the management of the cause shall be entrusted to any other pleader of the court, instead of filing a new vakalutnamah, it shall be sufficient for the party or his mooktar duly authorized, to endorse on the back of the original vakalutnamah, a written declaration, that he has appointed some other vakeel of the court to conduct the cause, either permanently or during the absence of the pleader first appointed, on passing a decision in such cases, the court shall direct the amount of the authorized fee to be divided between the two pleaders in such proportions as may furnish an equitable remuneration for the trouble which they may have respectively undergone.—*Ibid*, Sect. 13.

Measures to be adopted when a pleader may be unable to attend the court from indisposition or other sufficient cause.

328. Whenever a vakeel attached to a Zillah or City court may die, or may be removed from his office, or may voluntarily resign his situation, the Judge of such zillah or city shall notify the same in a publication, to be affixed in his own cutcherry, and in the cutcherries of the Register, Sudder Ameer, and the Collector of the district. The publication shall contain a statement of the several depending cases, in which such vakeel may have been employed, and a requisition to the parties who have retained such vakeel to attend in person, or to substitute another vakeel in room of the pleader formerly appointed by them, within a reasonable period, to be fixed by the court, not being less than six weeks. In such instances, instead of filing a new vakalutnamah, it shall be sufficient for the party or his mooktar duly authorized to endorse on the back of the original vakalutnamah a written declaration, that he has appointed some other vakeel of the court, in lieu of the pleader, who may have died or resigned his office, or have been removed from his situation.—*Ibid*, Sect. 18, Cl. 1.

Publication to be issued on the death, resignation or removal of a pleader in a zillah or city court.

What the publication is to contain.

329. A publication, issued in conformity with the preceding rules, shall be held and considered to be a good and sufficient notice, and if any party shall not attend or appoint another vakeel, within the period limited in the publication, he shall be required to shew cause for the omission, and if sufficient cause be not assigned, the court shall proceed as in case of default in conformity with the provisions in force.—*Ibid*, Cl. 2.

Such publication to be considered a good and sufficient notice.

330. A similar notification shall be issued on the death, resignation or removal of any pleader attached to the Provincial courts or to the Sudder dewanny adawlut. If the pleader shall have been attached to a Provincial court, the publication shall be affixed in the cutcherry of such Provincial court, and of the Sudder dewanny adawlut, and, in

Publication to be issued on the death, resignation, or removal of a pleader in the prov. courts or in the S. D. A.

the cutcherries of the several Zillah and City courts, included in the division, and the period to be allowed for parties to appear and to substitute another vakeel shall not be less than two months; if the pleader shall have been attached to the Sudder dewanny adawlut, the publication shall be affixed in that court, and in such of the Provincial courts, and of the Zillah and City courts, in which it may appear necessary to publish the same with reference to the depending causes in which the vakeel may have been employed, and the period to be allowed for parties to appear and substitute another vakeel shall not be less than three months.—*Ibid*, Cl. 3.

Similar publication may be issued in other cases.

331. The courts are authorized to apply the principle of the preceding rules to cases, in which the decision of suits may be materially delayed by the protracted indisposition of a pleader, or by his continued inability to attend the court from any other cause which may be expected to be permanent, or of considerable duration.—*Ibid*, Cl. 4.

Courts empowered to adjudge a reasonable portion of the fee to a pleader, who may have been removed from the management of a cause without any fault on his part.

332. Whenever a pleader originally entertained by a party may have commenced the pleadings and prosecution, or defence of a suit, and from any cause, not originating in the misconduct of such pleader, another pleader shall be employed in his stead, it shall be competent to the court, in which the suit is decided or terminated, to adjudge to the pleader so employed at the commencement of the suit (or if he be dead, to his heirs or legal representatives) such part of the established fee, as may appear to be an equitable remuneration for the trouble which he may have undergone.—*Ibid*, Cl. 5.

In such cases calculation with or without interest.

333. It shall be sufficient in such cases for the party employing two or more vakeels in the same suit to file a single vakalatnamah, but the party shall be required to deposit in court, the whole amount of the fees payable to his pleaders, under the rules contained in Section 23.—*Ibid*, Sect. 30, Cl. 2.

## SECTION XVI.

### *Vakeels in those Courts—Legal Opinions.*

Pleaders may receive fees for legal opinions.

334. The authorized vakeels of the Sudder dewanny adawlut, of the Provincial courts, and of the Zillah and City courts, are hereby empowered to receive fees for legal opinions under the provisions contained in the following clauses of this section.—*Reg.* 27, 1814, Sect. 20, Cl. 1.

A written statement of the case to be submitted to the pleader.

335. Any person, who may be desirous of obtaining the opinion of an authorized pleader regarding the legal validity and sufficiency of any claim, right or title, which he may suppose himself to possess, and on the consequent expediency of prosecuting or defending either originally or in appeal such supposed claim, right or title in the Courts of civil judicature, may submit a written statement of his claim under his seal, signature, or mark, to the pleader, whose opinion he may wish to obtain.—*Ibid*, Cl. 2.

The pleader to give a written declaration of his opinion.

336. The pleader, to whom such statement may be submitted, after an attentive consideration of the law, regulations, usages, or precedents, which may be applicable to the

case, and of the arguments, and proofs which may be adduced in support of the claim, shall furnish to the party under his signature, a written declaration of his opinion, and of the grounds upon which that opinion may be formed.—*Ibid*, Cl. 3.

337. And it is hereby enacted, that so much of Section 20, Regulation 27, 1814, of the Bengal code, and of Section 20, Regulation 14, 1816, of the Madras code, as prescribes the rate of fees to be received by authorized pleaders for legal opinions, be repealed; and that persons taking such opinions from authorized pleaders shall be at liberty to settle with them by private agreement the remuneration to be paid for such opinions.—*Act I. 1846, Sect. 9.*

*Sac. 20, reg. 27, 1814 repealed. Parties will settle by private agreement the fees for legal opinions.*

338. Provided however, that it shall not be lawful for any pleader, who may have received a vakalutnamah in any suit instituted in a Court of civil judicature, to receive the fee above prescribed on account of any legal opinion, which he may subsequently furnish to his constituent respecting any subject or question connected with such suit.—*Reg. 27, 1814, Sect. 20 Cl. 5.*

*But pleaders who may have accepted a vakalutnamah in the case not authorized to receive such fee.*

[*The penalty for furnishing an opinion calculated to promote the institution of unfounded and vexatious suits is given at Rule 284.*]

339. The vakeels of the Sudder Amiens' and Principal Sudder Amiens' courts are equally competent with other vakeels of the Zillah and City courts to claim fees for furnishing legal opinions on points of law, or in particular cases which may be referred to them by the parties interested.—*Con. 802, West. C. 5th July, Cal. C. 2d Aug. 1833.*

*The vakeels of the courts of P. S. A. and S. A. may claim fees for legal opinions.*

## SECTION XXII.

### *Vakeels in those Courts -their Fees*

340. And it is hereby enacted that parties employing authorized pleaders in the said courts shall be at liberty to settle with them by private agreement the remuneration to be paid for their professional services, and that it shall not be necessary to specify such agreement in the vakalutnamah; provided that when costs are awarded to a party in any regular suit, original or appeal, decided on the merits, against another party, the amount to be paid on account of fees of pleaders shall be calculated according to the rules contained in the sections of Regulations specified in Section 6 of this Act; [No. 343—348.] and that when costs are awarded in other cases the amount to be paid on account of such fees shall be one-fourth of what it would have been in a regular suit decided on its merits.—*Act I. 1846, Sect. 7.*

*Rules regarding the fees to be paid by suitors to the authorized pleaders of the various courts.*

341. And it is hereby enacted, that private agreements between parties and their pleaders respecting the remuneration to be paid for professional services shall not be enforced otherwise than by a regular suit.—*Ibid*, Sect. 8.

*Private agreements regarding fees cannot be enforced but by a regular suit.*

342. With reference to Clause 6, Section 2, Regulation 12, 1833, it is not competent to a Civil court summarily to order payment to the heir of a deceased vakeel, of the remuneration

*A court cannot summarily order payment of the remuneration.*

ration agreed on to the heir of a deceased vakeel agreed by his client to be paid to him under clause 5 of the same section and Regulation.—*Rep. Sum. Cases*, 5th Dec. 1843, p. 53.

Specification of the rates of fees payable to vakeels in regular suits

343. In suits for money, effects, or for other personal property, or for land or other immovable property of any description, if the amount or value of the claim estimated according to the provisions of Section 14, Regulation 1, 1814, [now Regulation 10, 1829,] shall not exceed 5,000 sicca rupees five per cent.—*Reg. 27, 1814, Sect. 25. Cl. 1.*

Idem.

344. If the amount or value shall exceed 5,000 rupees, and shall not exceed 20,000 sicca rupees, on 5,000 as above, and on the remainder, two per cent.—*Ibid.*

Idem.

345. If the amount or value shall exceed 20,000 rupees, and shall not exceed 50,000 rupees, on 20,000 as above, and on the remainder, one per cent.—*Ibid.*

Idem

346. If the amount or value shall exceed 50,000 sicca rupees, and shall not exceed 80,000 sicca rupees, on 50,000 as above, and on the remainder eight annas per cent.—*Ibid.*

Idem

347. If the amount or value shall exceed 80,000 rupees, the fee to the vakeel shall be one thousand rupees, and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such vakeel may be employed.—*Ibid.*

Fractions of rupees to be rejected in the preceding calculations

348. In all the preceding calculations, where the amount or value may be in fractions of rupees, such fractions are to be rejected in calculating the fees thereupon — *Ibid, Cl. 2.*

Modification of the rule which requires stamp receipts for pleaders' fees

349. The rule contained in the third clause of Section 25, Regulation 27, 1814, that for every sum which may be paid by a Civil court to a vakeel, on account of his fees, he shall give a receipt, written on the stamped paper prescribed in Section 11, Regulation 1, 1814, is modified as follows.—*Reg. 19, 1817, Sect. 10. Cl. 1.*

If the fees in several suits do not exceed 16 rs., one consolidated receipt for the whole is suffice.

350. When the aggregate amount of fees payable to a vakeel, in two or more suits, may not exceed sixteen rupees, he shall be allowed to give a consolidated receipt for the total amount, specifying the sum receivable in each suit, instead of a separate receipt for the fee payable in each suit.—*Ibid. Cl. 2.*

No charge on vakeels' fees, but the stamp required for a receipt

351. Vakeels are liable to no charge on their fees, beyond the value of the stamp on which the receipt for the same is to be written.—*Con. 156, 21st April 1814.*

Pleaders' fees how to be charged in the judgment.

352. If the decree shall be given against the defendant or respondent, and the whole of the money or property, which may be demanded by the appellant or plaintiff shall be decreed to him, a sum equal to the whole of the fees of his pleader shall be adjudged to the plaintiff or appellant, in addition to the other costs which may be awarded to him, but if only a part of the money or property claimed is decreed to the plaintiff or appellant, a sum bearing the same proportion to the money or to the value of the thing decreed, as the fee did to the demand stated in the plaint or appeal, is to be decreed and added to the costs, which may be awarded to the plaintiff or appellant.—*Reg. 27, 1814, Sect. 26 Cl. 1.*

353. If the suit of the plaintiff or appellant shall be dismissed, whether upon an investigation of the merits or otherwise, the plaintiff, or appellant, is to be charged with the fees of his own pleader and with those of the defendant or respondent.—*Ibid*, Cl. 2.

Continuation of the same subject.

354. Provided however, that if in any instance the payment of the pleader's fees, according to the preceding rules, should not appear to be just and equitable, the Courts of civil judicature may exercise their discretion in charging the fees of the pleaders to the parties respectively, in such proportions as may appear equitable and proper, under a consideration of all the circumstances of the case.—*Ibid*, Cl. 3.

Proviso.

355. If a suit shall be withdrawn or dismissed on default without a determination upon the merits of the case before all the requisite pleadings shall have been filed in court, the respective pleaders of the plaintiff and defendants, or of the appellant and respondent, shall each be entitled to only one-fourth of the established fee which they would have received, had the suit been brought to a regular decision by the court. If a suit shall be withdrawn or dismissed on default, after all the requisite pleadings shall have been filed in court, the respective pleaders are to be entitled to one-half the fees which they would have received, if judgment had been given in the cause. The fees in both of the above-mentioned cases are to be charged to the plaintiff or appellant withdrawing the suit, or suffering it to be dismissed on default, together with all the admitted costs incurred by the defendant or respondent.—*Ibid*, Sect. 31, Cl. 1.

Rules for the payment of vakeels' fees when the suit may be withdrawn or dismissed without an investigation of the merits of the case.

356. The rule will be considered applicable to cases adjusted by razeenamah, except that the fees of the pleaders and all other costs of the suit shall be paid by the parties in such manner and proportions as may have been agreed upon and inserted in the razeenamah.—*Ibid*, Cl. 2.

Rules applicable to the fees of pleaders in suits adjusted by razeenamah.

357. The Court are of opinion that to entitle the respective pleaders of the parties in cases withdrawn or dismissed on default to one-half the amount of the established fee, under the provisions of Section 31, Regulation 27 of 1814, it is necessary that the whole of the requisite pleadings should have been filed, and not merely the answer or jowab-dawce.—*Con.* 1052, *West. C. 11th Oct, Cal. C. 11th Nov. 1836.*

Unless the whole of the pleadings have been filed in cases dismissed on default or, withdrawn, the pleaders cannot receive half their fees.

358. I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of a letter from you, dated the 24th ultimo, relative to the payment of the fees of pleaders, in a case decided in favour of the plaintiff, on the acknowledgment of the defendant without investigation of the merits, as well as without a razeenamah being filed, so as to bring it within the provision of Section 31, Regulation 27, 1814. The Court observe that in such cases, the claim of the plaintiff not being disputed by the defendant, it may generally be expected, a razeenamah will be filed, when the second clause of Section 31, Regulation 27, 1814, would of course be applicable. But if not, and the suit be allowed to proceed to a judgment in favour of the plaintiff, the Court are of opinion, that the vakeels are entitled to the full amount of the established fee : subject, of course, to the provisions of Regulation 28, 1814, in suits of paupers.—*Con.* 209, 1st June 1815.

Cases in which the vakeels will be entitled to their full fee, or to one half or one quarter fee

359. The Court of Sudder dewanny adawlut have had before them your officiating Judge's

In cases adjusted



by razeenamah after the evidence has been completed, the pleaders are entitled to the full fee

letter, dated the 24th ultimo, requesting to be informed, whether it is competent to the courts to order the whole fees to be paid to the vakeels in cases adjusted by razeenamah after evidence has been taken; or whether the rule in Section 31, Regulation 27, 1814, for giving one-half the established fee in cases so settled, after the requisite pleadings shall have been filed, is applicable after evidence has been taken. In reply, I am desired to communicate to you, for the information and guidance of your officiating Judge, that in cases adjusted by razeenamah after evidence has been completed, the vakeels are entitled to their whole fees, in like manner as if no razeenamah had been admitted.—*Con. 418, 5th May 1826.*

Rules where two or more pleaders may be employed by the same party

360. The parties in a suit are respectively permitted to entertain two or more pleaders, who shall either divide the authorized fee between them, in an equal, or in any other proportion, which may have been previously agreed upon between them and their constituent, or shall each be entitled to receive the full established fee, as may be specified in the vakalutnamah: but all stipulations to this effect shall be distinctly stated in the vakalutnamah which shall otherwise be construed to entitle the whole of the vakeels appointed by it to an equal division of the established fee and no more.—*Reg. 27, 1814, Sect. 30 Cl. 1.*

In such cases one vakalutnamah only is requisite

361. It shall be sufficient in such cases for the party employing two or more vakeels in the same suit, to file a single vakalutnamah, but the party shall be required to deposit in court, the whole amount of the fees payable to his pleaders, under the rules contained in Section 23.—*Ibid, Cl. 2.*

When two or more pleaders may be employed, the adverse party shall in no case pay more than the prescribed fee to the pleader

362 If the party shall agree to pay to each of the vakeels employed by him the full amount of the authorized fee, the opposite party in the suit shall in no case be required to make good more than the fee of one of those pleaders, or such part of that fee as may be adjudged against him by the court. The fees of the other pleader are to be considered as a separate expence to be defrayed exclusively by the party entertaining him, and for which he is not to be reimbursed in any case whatever.—*Ibid, Cl. 3.*

A vakeel or by two defendants under separate vakalutnamahs will receive the full fee from each, the whole or which the plaintiff will pay if the suit be dismissed

363 The Court of Sudder dewanny adawlut have had before them your letter, dated the 28th February last, submitting the following questions for their opinion, with reference to the provisions contained in Section 30, Regulation 27 of 1814:—*First.* Whether in the event of two defendants in a civil suit choosing to employ the same vakeel under separate vakalutnamahs, and each allotting to him the full amount of fees prescribed by Section 25 of the Regulation in question, such vakeel would be authorized in receiving the same? *Secondly.* Whether in the event of two separate vakeels being employed by two separate defendants, they would each be entitled to receive the full amount of fees, and, in that case, what amount of fees would be chargeable to the plaintiff, on dismissal of the suit?—In reply to your first question, I am directed to communicate to you the opinion of the Court, that where a vakeel is employed by two defendants, under separate vakalutnamahs, he is entitled to receive from each the full amount of fees prescribed by Section 25, Regulation 27, 1814; and in reply to your second question, that where two separate vakeels are employed by two defendants, they are each entitled to the full amount of fees, and that the whole amount of fees so due is chargeable to the plaintiff on the dismissal of his suit.—*Con. 500, 3d April 1829.*

364. All petitions of appeal from decisions of Moonsiffs are to be presented by the appellant in person, or by one of the authorized vakeels of the court; and if the appeal shall be admitted, and the appellant and respondent shall not plead their cause in person, their respective vakeels are to be allowed the same fees as in other suits tried before the Judge.—*Reg. 23, 1811, Sect. 46, Cl. 3.*

How petitions of appeal from decisions of moonsiffs are to be presented.

[The above enactment is made applicable to Sudder Ameens by Section 73 of the same Regulation.]

365. On a reference from the Judge of Jessore as to whether the provisions of Clause 6, Section 2, Regulation 12, 1833, extended to pauper suits, it was held that the rule was applicable to all suits in which private engagements exist between parties and pleaders.—*Con. 1297, Cal. C. 28th May, West. C. 18th June 1841.*

Paupers may make private engagements with their pleaders.

[Clause 6, Section 2, Regulation 12, 1833, corresponds with Section 8, Act I. 1816, given above No. 341.]

366. I am directed to acquaint you that it has been ruled by the court, that where a party gaining a cause may have employed in the conduct of the same a special agent, under the provisions of Clause 4, Section 2, Regulation 12 of 1833, instead of a regular vakeel, such successful suitor shall not, in future, be entitled to recover from the losing party any reimbursement on account of remuneration granted by him to the special agent so employed, nor shall the court trying the cause award anything on that account.—*Cal. Ord. Cal. and West. C. 28th June 1839.*

A party employing a special agent and not a regular vakeel, not entitled to be reimbursed his fees by the losing party.

367. Held that if in a claim against several defendants holding separate interests, such separate interests be specified in the plaint, the defendants may deposit their vakeels' fees in proportion to their respective interests, but that if there be no such specification of interests, each defendant must deposit according to the amount of the entire claim.—*Remark.*—Of course no deposit at all would be required from parties settling with their pleaders under Regulation 12, 1833.—*Rep. Sum. Cases, 22d June 1836, p. 10.*

Rule regarding the deposit of fees, where there is a claim against several defendants, and their separate interests are specified in the plaint.

368. The levying of pleaders' fees cannot be stayed by an appeal from the decision.—*Con. 110, 3d Sept. 1812.*

The levying of fees not to be stayed by an appeal.

[Regulation 12, 1833, has been repealed by Act I. 1816, but the principle of the above Construction and Circular order may still be considered as in force.]

## SECTION XXIII.

### *Mooktars—Mooktarnumals—Powers of Attorney.*

369. I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, requesting to be informed, whether the prohibition against the employment of a mooktar convicted of gross misconduct is to be confined to the case in which his misconduct has been brought to light; and in reply to inform you that one proved act of gross misconduct is sufficient to warrant a general rejection of the mooktar.—*Con. 809, Cal. C. 2d Aug., West. C. 6th Sept. 1833.*

One proved act of gross misconduct will warrant the general rejection of the mooktar.

General mooktar  
admissible under the  
discretion of the local  
authority

370. The Court of Nizamut adawlut have had before them your letter, dated the 29th ultimo, suggesting that a rule of practice be issued by the Court, stating the extent of the powers vested in a general mooktar to act for another. In reply, I am desirous to acquaint you that the Court do not consider any rule of practice to be requisite on the subject, and to refer you to the provisions contained in Sections 4 and 6, Regulation 9, 1807, and Section 2, Regulation 2, 1806, which clearly recognize the admission of general mooktars; but the Court observe that, in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority, according to the particular circumstances of each case.—*Con. 512, 17th July 1829*

The copy of a ge-  
neral power of attor-  
ney kept for record  
should be on plain  
paper

371. Held that the copy, kept for record in the courts in lieu of the original, of a general power of attorney to act in more than one court, should be written on plain paper.—*Rep. Sum. Cases, 12th Feb 1844, p. 56.*

A general power of  
attorney written on  
4 rupee stamp may be  
returned to the party  
filing it

372. I beg to submit the following points for the orders of the superior Court: A general power of attorney written on stamped paper of four rupees, as required rule A. Regulation 10 of 1829, has been presented for the purpose of being attested, with a request that it may be given back to the party after acknowledgment. The practice of this court hitherto has been to retain such mooktarnamahs, allowing individuals to take copies of them on the same stamped paper as prescribed for the original deed.—In reply, I am directed to inform you that you are at liberty to return the original powers of attorney described in your letter to the parties filing them, at your own discretion.—*Con. 917, West. C. 28th Nov. 1834, Cal. C. 2d Jan. 1835.*

P. S. A. may be  
employed in attesting  
mooktarnamahs

373. As doubts have been entertained whether a zillah or city Judge is competent to employ a Principal Sudder Ameen in attesting mooktarnamahs required to be filed in other courts, the Court direct me to inform you that such duty may be entrusted to a Principal Sudder Ameer whenever the measure may appear advisable. The Court direct me, at the same time, to call your attention to the provisions of Section 7, Regulation 20, 1812, which distinctly declare that no documents shall be registered but such as are enumerated in that enactment, or in Regulation 36, 1793, or Regulation 17, 1803. As mooktarnamahs are not mentioned in these Regulations the Principal Sudder Ameen should be cautioned against registering such papers or levying any fee or gratuity for attesting them.—*Civ. Ord. West. C. 6th March, Cal. C. 3rd April 1835.*

S. A. and M. may be  
employed in attesting  
mooktarnamahs

374. In supercession of the Circular order, No. 138, dated Western Provinces, 6th March and Lower Provinces, 3d April, 1835, the Court are pleased to declare that the district Judges are competent to employ generally the Sudder Ameens and Moonsiffs, equally with Principal Sudder Ameens, in attesting mooktarnamahs required to be filed in other courts.—*Civ. Ord. 8th Nov. 1844, par. 1.*

The judges will  
affix their official seal,  
as well as their signa-  
tures to mooktarnama-  
hahs

375. The unexcoient Judges of every class should be required to affix their official seals, as well as their signatures to mooktarnamahs, and cautioned against registering such papers or levying any fee or gratuity for attesting them.—*Ibid, par. 2.*

The personal ap-  
pearance of the party  
executing the mook-  
tarnamah, unneces-  
sary, two credible wit-  
nesses sufficient

376. The personal appearance and acknowledgment of the party executing the mooktarnamah is unnecessary; it being quite sufficient that the execution of the document be proved by two credible witnesses.—*Ibid, par. 3.*

The remuneration  
of the mooktar not  
payable by the losing  
party

377. The remuneration of the special agent (mooktar) of the opposite party, cannot be made payable by the losing party.—*Rep. Sum. Cases, 15th Jan. 1840, p. 27.*

378. Copies of mooktarnamahs filed previously to the promulgation of Regulation 16, 1824, must be written on a stamp of the same value as the original under the Regulations in force when such original instrument was executed.—*Con. 412, 27th Jan. 1826.* Stamp on which copies of mooktarnamahs must be written.

379. I am desired by the Court of Sudder dewanny adawlut to acknowledge the receipt of your letter, dated the 6th instant, together with its enclosed copy of a letter from the Judge of zillah Meerut, requesting information as to whether the rules contained in Regulation 16, 1824, relative to mooktarnamahs, should be considered applicable to those documents filed in the courts of the Moonsiffs.—In reply, I am directed to communicate to you the opinion of the Court, that it never could have been intended to subject mooktarnamahs filed in the courts of the Moonsiffs to the heavy stamp duty, prescribed by the Regulation above quoted.—*Con. 416, 14th April 1826.* Mooktarnamahs in moonsiffs' courts not liable to stamp.

380. The Court of Sudder dewanny adawlut have had before them your officiating Judge's letter, dated the 16th ultimo, enclosing copies of two petitions from Kasheepershad Rai, of your court's proceedings, and of a correspondence between your court and the Judge of zillah Rajshahye, regarding certain doubts entertained by Mr. Pringle upon the legality of an order passed by your court on a petition presented by the mooktar of Rajinder Mitter.—In reply, I am directed to observe, that the question which has given rise to this reference seems to be simply as to the legality or otherwise of the practice of permitting mooktars to file vakalutnamahs, in suits wherein their principals are parties; and to acquaint you with the opinion entertained by you on the subject, corresponds in every respect with the view which this Court have taken of it. The Court observe, that to execute *per alium*, [that other being duly authorized,] is to execute *per se*; and that the Regulations consider these acts as one and the same; as is clear from the more explicit wording of Section 13, Regulation 27, 1814, which prescribes the performance of certain acts to be done *by the party or his authorized agent*. Although the wording of Section 8, Regulation 7, 1793, is not different from that of Section 21, Regulation 27, 1814, yet, from the time of its enactment (two and thirty years ago), vakalutnamahs executed by agents duly authorized, have, by all the courts, been regarded as equally good and valid with those executed by the parties themselves. The Court therefore are of opinion, that it would be inexpedient to put a stop to a practice which has been sanctioned by universal usage, which is attended with much convenience to parties in suits, and which the Regulations in force do not appear to prohibit. You will be pleased to furnish the Judge of Rajshahye with a copy of this letter, for his information and future guidance.—*Con. 417, 28th April 1826.* Vakalutnamahs executed by mooktars valid.

381. A, before his departure on a pilgrimage to Mecca, appointed B. his attorney, with general powers of management and superintendence of his property during his absence. The power of attorney executed by A. further empowers B. to defend all suits in the Civil courts, to appoint and remove mooktars or agents, and specifically provides for the appointment of vakeels or pleaders, without any specification as regards the appointment of agents under Regulation 12, 1833. Held that a person vested with the management of the property of an absent party, under a document of the abovementioned nature, is competent to appoint special agents under Regulation 12, 1833, on behalf of his principal.—*Con. 1268, West. C. 20th Dec. 1839, Cal. C. 20th March 1840.* Who may also appoint special agents under reg. 12, 1833, now Act 1, 1846.

382. A memorandum of agreement for the time of the services of a mooktar specifying a On what stamp an

agreement with a fixed sum as his monthly stipend in money, and guaranteeing to him his daily food, must be written on a stamp under the rule in Clause 2, Schedule A, Regulation 10, 1829.—*Con.* 1306, *West. C.* 20th July, *Cal. C.* 20th Aug. 1841.

**Power of attorney executed in England.** 383. A power of attorney executed in England, was under the circumstances held to have been sufficiently attested by the affidavits of persons acquainted with the handwriting of the party executing.—*Rep. Sum. Cases*, 15th Feb. 1847.

**General power of attorney by the son and next heir of the deceased sufficient to defend an appeal.** 384. Pending an appeal from a decision obtained in the Provincial court by Messrs. Palmer and Co. as attorneys for Mr. Morgan, senior, that gentleman died; but the Court allowed Messrs. Palmer and Co. to defend the appeal under a general power of attorney executed by the son and next heir of the deceased.—*S. D. A. Sel. Rep.* 14th Feb. 1820, vol 3, p. 14.

**A Zillah Judge not required to authenticate an English power of attorney.** 385. I wish you to do me the favor of ascertaining from the Judges, whether a civil Judge is at liberty to authenticate an English power of attorney sent by a lawyer of the Supreme Court, to be executed by a Native resident of the Judge's district, and with a view to constituting a Native of Calcutta his attorney, in some matter pending or to be so before the Supreme Court.—I am directed to acknowledge the receipt of your letter of the 11th instant, requesting to be informed whether a civil Judge is at liberty to authenticate an English power of attorney, and in reply to inform you that no Regulation positively requires a Judge to attest such documents; and that if it is likely that the attestation of it will entail the necessity of attendance on the Supreme Court to verify your signature, and thus cause interruption to the discharge of your regular duty, they are of opinion that you should decline doing so.—*Con.* 960, 19th June 1835.

## SECTION XXIV.

### *Government Pleaders*

**Rules for the appointment of pleaders on the part of Government.**

386. One or more of the authorized pleaders of the Sudder dewanny adawlut, of the Provincial courts, and the Zillah and City courts, shall be appointed for the purpose of conducting the prosecution or defence of any suits in those courts respectively, which may be directed to be carried on at the public expence, by any Regulation or by a special order from the Governor General in Council, or other authority competent to pass such order. Those pleaders shall be furnished with a sumud or written authority to that purport in the English and Persian languages, under the signature of the Secretary to Government in the Judicial department, and the sumud shall be drawn up according to the form No. 5, of the appendix to this Regulation.—*Reg.* 27, 1814, *Sect.* 37, *Cl.* 1.—*Sumud to be granted to the Pleaders of Government in the English and Persian Languages.*—In conformity with the provisions of Regulation 27, 1814, you, A. B., are hereby appointed to the office of pleader on the part of Government, in the Sudder dewanny adawlut, or in the Provincial court for the division of ——— or in the Zillah or City court of ———. You will not be liable to be removed from your office so long as you may conduct yourself with propriety, and discharge your duty with zeal, ability, and integrity, under the Regulations which are now in force, or which may hereafter be enacted.—*App. No. 5, Reg.* 27, 1814.

387. With reference to the provisions of Section 8, Act VI. of the present year, I am desired by the Sudder board of revenue to annex hereto, for your information and guidance, a copy of a letter No. 97 of this date, addressed to the Commissioners of the Jessore division. In reply to your letter No. 119, of the 19th ultimo, relative to the employment of counsel on the part of Government in suits referred for decision to Moonsiffs under Section 8, Act VI. of the present year, I am directed by the Sudder board of revenue to instruct you, that the most advisable plan which occurs to them upon a consideration of all circumstances is, that you should procure lists of the pleaders in each Moonsiff's court of each district of your division, and require the Government pleader of the district to certify, on his own responsibility the ablest and most respectable pleaders for Government employ, and these pleaders should be engaged for suits as they occur through the agency of the Government pleader of the district. The usual fees will suffice without the addition of the fixed salary, as the credit this employment will create will give them additional general practice.—*Cor. Ord.* 14th July 1843.

Made of employing  
pleaders in govt. suits  
referred to moonsiffs  
under sec. 8, act 6,  
1843

388. The pleaders for Government are to undertake all causes which they may be directed to plead by orders from Government, or which may be directed by any Regulation to be carried on at the public expense, upon receiving an order for that purpose, either from Government or from any officer or officers empowered by any Regulation to superintend, and to furnish instructions for conducting such suits. The order of Government, or of such officer or officers, is to be filed in court as the authority of the pleader to plead the cause, and is to form part of the record of the proceedings.—*Reg.* 27, 1811 *Sect.* 37, *Cl.* 3.

Duties to be per-  
formed by pleaders  
on the part of go-  
vernment

389. The pleaders of Government are prohibited from giving any advice to the parties opposed to Government in any civil suit or proceeding, and from being concerned, directly or indirectly, on their behalf, in suits which are directed to be carried on at the public expense; but in all other suits the pleaders of Government are to be at liberty to plead for either of the parties in the same manner as the other authorized pleaders of the court.—*Ibid.* *Cl.* 4

Such pleaders pro-  
hibited from advising  
parties opposed to  
government

390. The pleaders for Government are to be paid the same fees in causes directed to be pleaded at the public expense, as pleaders employed in causes between individuals, and under the same rules and restrictions; provided however that the previous deposit, prescribed in Section 23 of this Regulation, shall not be required for the fees, payable to the pleaders of Government, in the prosecution or defence of suits conducted at the public expense.—*Ibid.* *Cl.* 5.

What fees they are  
entitled to receive

391. In pleading suits directed to be carried on at the public expense, the pleaders for Government are to be subject to all the rules prescribed for their guidance when pleading on behalf of individuals, except in matters or cases in which it may be otherwise especially directed by any Regulation.—*Ibid.* *Cl.* 6.

To be guided by the  
same rules as pleaders  
in other suits

392. The Board of Revenue, the Board of Commissioners in the upper provinces, the Board of Trade, or any other authorities, entrusted with the management of suits on the part of Government, are empowered to associate with the established vakool of Government, any other authorized pleader, in cases in which such aid may, from the importance of the suit, or any other reason, be judged necessary or advisable. Such additional pleader

Another pleader  
may be associated  
with the pleader of  
government in carry-  
ing on suits at the  
public expense

shall be furnished with a vakalutnamah, duly authenticated by the officer or authority employing him, and shall be entitled to receive the same fees, and under the same rules and restrictions, as if he were employed on the part of an individual, subject however to the provision contained in clause fifth of this section.—*Ibid*, Cl. 7.

Vakeels prohibited from being employed as agents or mooktars in the Zillah or courts of the Zillahs and cities.

393. The authorized pleaders of the Zillah and City courts are hereby prohibited, without obtaining the previous sanction of the Judges of those courts, from officiating as agents or mooktars in any prosecution, trial or proceeding before the Magistrates or their assistants. This prohibition however is not intended to apply to the cases of pleaders, who may be employed on the part of Government in conducting the prosecution of persons charged with criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorized to perform on the part of Government under the Regulations, which are now or may hereafter be in force.—*Ibid*, Sect. 17.

Vakeels of Government to plead the cause of invalids free of cost, on the requisition of the Collector.

394. To prevent invalid jaghirdars from being harassed with law suits, and to enable them to defend or prosecute suits in the Courts of civil judicature, without being obliged to attend in person, or being subjected to trouble and expence, it shall be the duty of the vakeel of Government on the requisition of the Collector to plead the causes of such invalids free of cost.—*Reg*, I. 1804. *Sect*. 14.

On vacancies occurring in the office of the vakeels of govt the courts of justice are merely to report the circumstances, for information of govt.

395. On the occasion of vacancies occurring in the office of the vakeels of Government in the Courts of justice, such courts shall not nominate any individual to succeed to the office, but shall merely report the circumstance, for the information of Government to the Secretary in the Judicial department.—*Reg* 13, 1829. *Sect* 1, Cl. 2

The govt will ascertain which of the pleaders may be best fitted to succeed to the vacant office.

396. It will rest with Government to ascertain by such enquiries as they may deem necessary, which of the constituted pleaders of the court is best fitted by his qualifications and character to succeed to the vacant office, and to appoint such individual accordingly.—*Ibid*, Cl. 3.

The order of a govt officer to a govt pleader to plead, is equal to a vakalutnamah.

397. The order of an officer of Government, filed by a Government pleader, is sufficient authority to him to plead a cause, and is admissible on plain paper.—*Rep Sum Cases*, 14th July 1846, p. 81.

## SECTION XXV.

### *Vakeels in Moonsiff's Courts.*

The rules passed for pleaders in the Zillah courts applicable to P. in the M's. courts. Form of sunnad for vakeels in M's. courts.

398. And it is hereby enacted that the rules applicable to pleaders in the courts of the Zillah and city Judges, shall henceforth be applicable, so far as they are capable of application, to pleaders in the Moonsiffs' courts.—*Act* I. 1846, *Sect*. 11.—*Form of sunnad to be granted to persons who may be appointed to officiate as vakeels in the cutcherries of the Moonsiffs*.—“ I, A. B., Judge of the Zillah or city of ——— do hereby appoint you, C. D., to act in the capacity of vakeel in the cutcherry of the Moonsiff of —

you will not be liable to be removed from your office, unless the Judge of the district or city of ———, in consequence of misconduct on your part, or of there being no longer any necessity for your being employed in the capacity of vakeel, shall deem it proper to recal and cancel this sunnud."—*App. No. 3 to Reg. 23, 1814.*

399. And it is hereby enacted, that whenever a pleader has conducted himself in such a manner in the court of a Moonsiff as would have rendered him liable to a fine if he had so conducted himself in the court of a zillah or city Judge, it shall be competent to such Moonsiff to impose such fine, provided that an appeal from all orders imposing such fines shall lie to the zillah or city Judge, whose decision thereon shall be final.—*Act I. 1816, Sect. 12.*

M. may fine a vakeel, but an appeal will lie to the judge.

400. A doubt having arisen as to whether an appeal does or does not lie to the Court of Sudder dewanny adawlut from the order of a zillah or city Judge, dismissing a vakeel of a Moonsiff's court: the Court are of opinion that such appeal does not lie; for the Judges were declared competent by Clause 3, Section 15, Regulation 23, 1814, to remove such vakeels (without a reference to any other authority being specifically required,) while they were required by Clause 2, Section 10, Regulation 27, 1814, to submit a report for the orders of the Provincial court, whenever they might consider a vakeel attached to their own courts, or to those of the Registers or Sudder Amceens, worthy of dismissal from office.—*Con. 846, Cal. C. 6th Dec, West. C. 27th Dec 1833.*

No appeal lies to the S. D. A. from the order of a city or zillah judge dismissing a vakeel in a moonsiff's court

401. It being believed that, under a misapprehension of Section 11, Regulation 7 of 1832, Moonsiffs are commonly in the habit of issuing separate process for the realization of vakeel's fees, not exceeding in amount the proportion of five per cent. on the value of the claim adjudicated, the Court of Sudder dewanny adawlut for the Lower Provinces intimate, that such a procedure is unauthorized by existing law, and is to be considered by the courts strictly prohibited for the future.—*Cur. Ord. 18th June 1814, par. 1.*

Moonsiff forbidden to issue separate process for realization of vakeel's fees,

402. The Court observe that the terms of the enactment above cited, taken in connection with the provisions of Clause 4, Section 15, Regulation 23 of 1814, merely authorize the inclusion of fees awarded in the final judgment, and their realization simultaneously with its execution; or, in other words, that the realization of vakeel's fees, as adjudged by Moonsiffs, must form part and parcel of the process of execution, except in cases wherein the claim may be dismissed, and the defendant may move the court for the recovery of his costs.—*Ibid, par. 2.*

How the fees of vakeels are to be realized in those courts,

403. The civil Judges are directed to ascertain that the purport of this order is rightly understood by the courts to which it has particular application, and to enforce conformity to the practice, which it inculcates, in future.—*Ibid, par. 3.*

The order to be strictly enforced.

404. Vakalatnamahs in Moonsiffs' courts, and applications to them for the execution of decrees, may be received on unstamped paper.—*Con. 950, Cal. C. 1st May, West. C. 10th July 1835.*

Vakalatnamahs in moonsiff's courts may be on plain paper

405. I am directed by the Court to inform you that the Regulations do not require the zillah and city Judges to interfere in regard to the remuneration of their vakeels by parties in the Moonsiffs' courts. They therefore desire that you will refrain from doing so, further

The zillah judges must not interfere in regard to vakeel's fees in moonsiff's courts.



than to intimate that if a party choose to change his vakeel he is bound to remunerate the individual engaged in the second instance, as well as him who was entertained originally.—*Con. 990, Cal. C. 11th Dec. 1835, West. C. 2d Jan. 1836.*

Where suits against vakeels or moonsiffs' courts for fraud, or misconduct will be received and tried.

406. Suits against the vakeels of Moonsiffs' courts for all breaches of trust, fraud or wilful misconduct, committed by them in their professional capacity, will be received and decided by the Moonsiff, but if the suit be beyond his competence, the Judge may transfer it to another and competent court or retain it on his own file.—*Govt. Ord. No. 11, 15th Jan. 1834.*

## SECTION XXVI

### *Mooniffs.*

No moonsiff will be employed in the performance of the miscellaneous duties described in Sec. 50 to 53, Reg. 23, 1814, except in special cases.

407. No Moonsiff shall in future be called upon to perform any of the miscellaneous duties described in Sections 50 to 53 of Regulation 23, 1814, except in very special cases, to be fully recorded on the proceedings of the court.—*Govt. Ord. Cal. C. 13th Jan., West. C. 10th Feb. 1837, par. 1, Cl. 1.*

The Judges may employ the moonsiffs in the investigation of questions respecting local rights & usages.

408. In question which may arise in suits depending before the Judge of any Zillah or City court relating to the adjustment of accounts in revenue or mercantile transactions, or regarding the boundaries of lands or houses, or regarding the right of way in roads or pathways, or regarding any rights in forests, commons, rivers, lakes, ponds, wells, reservoirs or water-courses, or regarding the quantity or description of land and the rent to which it is liable, and generally in all questions of local rights and usages, which cannot be conveniently decided without an enquiry on the spot, the Zillah or City Judge may empower any Moonsiff within his jurisdiction to make a local investigation into the merits of the question in dispute.—*Reg. 23, 1814, Sect. 50, Cl. 1.*

Instructions and proceedings to be furnished to the moonsiffs in such cases.

409. The Zillah or City Judges shall furnish to the Moonsiff such part of the proceedings and such detailed instruction in each case, as may be necessary for his information and guidance, and shall enjoin the Moonsiff, either merely to take the requisite evidence in the presence of the parties or their vakeels, and to transmit the same to the court, or likewise to transmit, with the evidence so taken, a report of his own sentiments on the point at issue founded on the result of the investigation held by him.—*Ibid, Cl. 2.*

The proceedings of the moonsiffs to be received as evidence in such cases, unless the Judge may be dissatisfied with them.

410. The proceedings of the Moonsiff are to be received as evidence in the case with regard to the specific matter which he may have been directed to investigate, but if the Judge shall have reason to be dissatisfied with the proceedings of the Moonsiff, he is at liberty to make such further enquiry as may be requisite, and to pass such ultimate judgment as may appear to him to be right and proper.—*Ibid, Cl. 3.*

Moonsiffs may be employed in giving possession of real property under decrees.

411. The Zillah and City Judges are further authorized to employ the Moonsiffs in delivering over fenced possession of lands, houses, or other real property in conformity with decrees, regulac or summary.—*Ibid, Sect. 51, Cl. 1.*

412. Previously however to issuing any instructions to a Moonsiff for the performance of any of the duties described in this or the preceding section, the Judge shall require either the plaintiff or the defendant, according to the circumstances of the case, to pay into court such a sum of money as may be an adequate remuneration to the Moonsiff for his trouble, provided such sum do not exceed the probable expence which would be incurred if an ameen or a Native officer of the court were employed in the execution of the same duty.—*Ibid*, Cl 2.

Moonsiffs how to be remunerated for their trouble in such cases.

413. The Moonsiff shall be entitled to receive such sum as may have been paid into court under the preceding clause, except under circumstances in which he may appear to have performed the duty entrusted to him in a negligent, unjust, or improper manner; in such cases the said sum of money shall be returned to the party who deposited it in court.—*Ibid*, Cl 3.

Such remuneration to be forfeited, if the Moonsiff shall have been guilty of misconduct in the execution of the duty.

414. The Moonsiffs may be employed at the discretion of the zillah and city Judges in the attachment and sale of personal property for the purpose of realizing the amount of fines or of decrees, regular or summary, and shall be entitled to receive a commission of one anna in each rupee on the proceeds of such sales.—*Ibid*, Sect. 52.

Moonsiffs may be employed to sell personal property by order of the Judge, and shall receive a commission on the proceeds of such sale.

415. The zillah and city Judges are further empowered to employ the Moonsiffs in ascertaining and reporting upon the sufficiency of securities, and the indigence of persons suing in forma pauperis.—*Ibid*, Sect. 53.

Moonsiffs may be directed to report on the sufficiency of securities, and the indigence of paupers.

416. The provisions of the preceding sections are not intended to preclude the Zillah and City courts from deputing an ameen for local enquiries, or from employing the authorized officers of the court in the execution of the various duties above detailed, whenever they may deem it expedient to do so in conformity with the existing Regulations; and the zillah and city Judges will be careful, that the time of the Moonsiffs be not so much occupied in the miscellaneous duties above described, as to interfere materially with the early trial and decision of the regular suits depending before them.—*Ibid*, Sect 54.

The preceding rules are not to preclude the employment of ameens or other officers of the court.

Judges to be careful that the time of the Moonsiffs be not too much occupied in miscellaneous suits.

417. The zillah and city Judges shall select and appoint as many duly qualified persons as they may deem requisite to act as ameens, who shall perform the miscellaneous duties abovementioned; of course the Judges will be at liberty to nominate the city and pergunnah cazees to those duties, when their services may be available.—*Cor. Ord. Cal. C. 15th Jan., West. C. 10th Feb 1837, par. 4, Cl. 2.*

Z and C J will appoint ameens to perform miscellaneous duties. Cazees may be appointed to them.

418. The persons so appointed shall be required to furnish security for their personal appearance, and for the faithful discharge of their duty.—*Ibid*, Cl 3.

A will furnish security.

419. Each ameen shall receive a regular stipend of appointment, describing the jurisdiction within which he is to act as ameen, and which should correspond exactly with the jurisdiction of Moonsiffs, unless special reasons exist for dividing a Moonsiff's jurisdiction, or for combining two or more jurisdictions under one ameen.—*Ibid*, Cl. 4.

A will receive a stipend. Their jurisdiction.

420. The ameens shall receive the same commission of one anna on the rupee which is

A will receive a

commission of Ianna in the rapee, and all act under the rules applicable to Moonsiffs as A

allowed to Moonsiffs, by the sections above cited, and they shall perform their duties under the same rules which are applicable to Moonsiffs or ameen under the existing Regulations.—*Ibid*, Cl. 5.

A not at liberty to appoint a deputy

421. The ameen shall perform the duties entrusted to him in person, and shall not be permitted to act by deputy on any account whatever.—*Ibid*, Cl. 6.

List of A to be affixed in all the courts of the district

422. Lists of the persons so appointed shall be affixed in the courts of all the Judges, European and Native, throughout the district, and an annual list shall moreover be furnished to this court.—*Ibid*, Cl. 7.

Judges, F and N, may depute their officers to perform these duties

423. Nothing contained in these rules shall be understood to prevent the Judges, European and Native, from deputing the officers of their own establishment, to perform any of the prescribed duties, whenever they may consider such a measure necessary.—*Ibid*, Cl. 8.

The native judges to conform to these rules

424. You are requested to issue the necessary instructions to the Native Judges on your establishment to conform to the orders of this Circular, whenever they have occasion to require the services of an ameen for any miscellaneous duties.—*Ibid*, par. 5.

Persons appointed to sell estranged property under Act I, 1837, not to be appointed A under the C.O. of 13th Jan 1837

425. The Court are pleased to direct that, if the practice of appointing to the office of ameen under the Circular order, No 197, of 13th January, 1837, persons who hold the situation of ameen under Act I, 1837, obtains in your district, it be discontinued, as they consider the junction of the two offices to be calculated to retard execution of the orders of the Civil courts.—*Civ. Ord.* 15th Aug. 1845.

No fees can be levied for the A employed in investigating the sufficiency of securities tendered to the S D A, or the circumstances of parties.

426. I am directed to inform you that no fees can be levied for the remuneration of the ameen appointed under the Circular order of the 13th January last, No. 217, in cases in which he may be employed in investigating the sufficiency of securities tendered to the Court of Sudder Dewanny adawlut or other zillahs, and the circumstances of parties wishing to sue in forma pauperis. Should you therefore consider it objectionable to employ, on these duties, persons who do not receive any fees, you are at liberty, as heretofore, to confide this duty to your nazir or to the Moonsiffs.—*Con.* 1073, *Cal. C.* 10th March, *West. C.* 31st March 1837, par. 1.

Duties and remuneration of A appointed under C.O. of 13th Jan 1837

427. The Court are pleased to circulate the following directions regarding the duties and remuneration of ameen, appointed under the Circular order, 13th January, 1837.—*Civ. Ord.* 31st Dec. 1841, par. 1

Classification of the duties of ameen

428. The duties on which the Civil courts are empowered by the Circular order above-mentioned to employ ameen are detailed in Sections 50 to 53 of Regulation 23, 1814, and may be classed under these heads: 1, The investigation of accounts in revenue or mercantile transactions, regarding the boundaries of lands or houses, regarding the right of way in roads or pathways, regarding any right in forests, commons, rivers, lakes, ponds, wells, reservoirs or water-courses, regarding the quantity and description of land and rent to which it is liable, and generally all questions of local rights and usages which cannot be ascertained by reference to the Collector's records, and cannot conveniently be decided without an enquiry on the spot; 2, The delivery of formal possession of lands, houses, or other real property in conformity with decrees or orders of court; 3, The attachment and sale of houses, gardens, orchards, or small portions of lakhiraj land, as well as of personal property, for the purpose of realizing the amount of fines, or of decrees, or other orders of court; and 4, Enquiring into and reporting

on the sufficiency of securities, and the indigence of persons suing in *forma pauperis*.—*Ibid*, par. 2.

429. As regards the last class of duties, it has been ruled, by Construction 1078, that no fees can be levied for the remuneration of the ameen in cases in which he may be employed in investigating the sufficiency of securities tendered to the Sudder dewanny adawlut or Zillah courts, or in enquiring into the circumstances of parties desiring to sue as paupers; and that, therefore, if the employment on those duties of persons who do not receive any fees, should be deemed objectionable, the Judges may, as heretofore, confide the duty to the Nazir or the Moonsiffs. The latter course, it is to be presumed, would be always followed; the gratuitous use of the services of an unsalaried agent, dependant for livelihood on the commission he may receive for work performed, being obviously improper.—*Ibid*, par. 3.

The last class of duties should not be thrown on an unsalaried A.; but given to the nazir or moon-siff.

430. As respects the first two classes of cases, the Court consider that no better rule for the ameen's remuneration can be adopted than that contained in Clause 2, Section 51, Regulation 23, 1814, cited in the margin. The law

General remarks on the remuneration of A. employed in the first two classes of duties.

*Viz* That previously to issuing any instructions to a Moonsiff for the performance of any of the duties described in that or the preceding section, the Judge shall require either the plaintiff or the defendant, according to the circumstances of the case, to pay into court such a sum of money as may be an adequate remuneration to the Moonsiff for his trouble; provided such sum do not exceed the probable expense which would be incurred in the case of a Native officer or the Court were employed on the same duty.

nowhere fixes the specific amount of remuneration to be paid to the ameen's under the rule above referred to, but merely directs that the courts shall order such sum to be paid to the ameen as may be thought reasonable for his

trouble; and enjoins care on the part of the court, that expenses be not unnecessarily incurred by the ameen through delay, in other cause.—*Ibid*, par. 4.

431. The Court have been pleased to fix the maximum amount of remuneration to be awarded to the ameen in such cases at twelve annas per diem for himself, and three annas for the hire of two peadahs, or a total rate of fifteen annas per diem, and this rate is on no account to be exceeded.—*Ibid*, par. 5.

The maximum remuneration to be 12 as a day for the A. and 3 as. for two peadahs.

432. It will be the duty of the presiding authority, at the time of directing the appointment of an ameen, to fix the period within which he should be required to make his return, and to determine the rate of his remuneration under the limits above laid down, as well as by which of the parties the amount shall be deposited; and the ameen shall on no account be appointed till such sum have been paid in. The amount having been deposited, a moiety of it shall be paid to the ameen, and the balance on the completion, to the satisfaction of the court, of the duty assigned to him. When such duty may be found to have been discharged in a negligent or improper manner, the court shall pass, in regard to the balance in deposit, such order as in each case, on a full review of the circumstances, may appear just and proper, either causing its refund to the depositing party, or appointing a second ameen, for the satisfactory completion of the work; the latter shall not, however, be entitled to receive as remuneration, more than the balance remaining in deposit.—*Ibid*, par. 6.

Rules fixing the period for accomplishing the duty, and the remuneration, & the party by whom the expense is to be paid. Payment of the sum to the ameen. Cases in which the duty has been ill performed.

433. Where the ameen may find it impracticable to make his return within the period fixed by the court, he shall submit a report to that effect, prior to the expiration of that term, stating fully the progress he has made towards execution of the order, and the circumstances which hinder completion within the period allowed. The court shall immediately take such report into consideration, and if it appear that the delay has arisen from neglect of the parties, or either of them, or from other circumstances beyond the control of the ameen, and in no way

Mode in which the court will act when the return has not been made within the specified period.

involving his conduct, it shall be competent to the court to grant such extension of time as may seem proper, and to direct the deposit, within a certain period, of such additional sum for the remuneration of the ameen as may be deemed reasonable. The court shall at the same time be competent to order payment to the ameen of such portion of the balance of original deposit as may suffice for his immediate expenses. In the event of the further deposit not being made within the time fixed, and the party, or his takeek, ordered to deposit the same, not being able to shew satisfactory cause for the delay, the court shall order the ameen to strike the case off on default, and direct the payment to him of the balance in deposit. When, however, the delay may be owing to the neglect of the ameen, the court shall require him to complete the duty within such further period as it may be fit to grant, but shall not allow him any additional compensation for that period.—*Ibid*, par. 7.

Regarding the third class of cases, the agency of the A will be restricted to the attachment and sale of lands ordered to be sold by the Civil

434. As regards the third and most numerous class of cases, in which real or personal property has to be attached and sold in realization of sums awarded by the Civil courts,\* much difference of practice is believed to prevail in the manner of employing the ameens; in some districts their agency being confined to the conduct of the sale, while it includes the attachment as well as the drawing up and issue of the sale advertisement in others—and in some instances ameens have been in the habit of receiving petitions of objection to the sale, and transmitting them to the court, whence they have been generally directed to conduct the enquiry into such objections, and report the results for orders. It has been, however, determined by the Court, that the duty of issuing the advertisement of sale, as well as the reception on their own authority, of any petition of objections to the sale, is beyond the competency of the ameens to perform, and their agency is to be restricted to the attachment and sale. *Ibid*, par. 8.

The remuneration of the A in such cases. From contingencies which require provision

435. For this duty under Section 51, Regulation 23, 1814, the ameens are entitled to receive a commission of one anna in the rupee on the proceeds of sales effected by them, but provision is not made for the following contingencies, on the occurrence of which under the above rule the ameen can receive no compensation, to which he is nevertheless entitled for the trouble and expence to which he may have been subjected:—1, Where no part, or only a very small portion of the property included in the schedule filed by the decree-holder, and ordered to be attached through the ameen, may, after due search and enquiry, be forthcoming; 2, Where, after attachment of the property, but prior to the date fixed for its sale, the party liable for the demand may discharge the same—or having compromised the matter with the decree-holder, the latter may file a *razemanah*, or where the sale may be postponed and eventually stopped by order of the court, or where, from any other cause, it may not take place; 3, Where the ameen may actually have proceeded, on the day fixed for sale, to the spot, and the sale may not take place owing to payment of the amount, or other cause; and 4, Where the sale having taken place, may afterwards be reversed for some cause not involving the conduct of the ameen.—*Ibid*, par. 9.

Rules regarding his remuneration in the first three contingencies

436. Respecting the first three contingencies, the Court have resolved that the ameen, in compensation for his trouble and expence, shall be paid by the same rate of daily allowance, as that fixed in paragraph 5 of this letter, viz. 12 annas for himself and 3 annas for the hire of

\* It has been ruled that ameens appointed under Circular order, 13th January, 1837, have the constructive power under Clause 3, Section 2, Regulation 7, 1825, of selling real as well as personal property in satisfaction of decrees.—See Circular Order, No. 69, 7th February, 1844

pendahs, the number of days being calculated according to the distance, on a fixed scale of distance per diem, which the Court are pleased to establish at ten miles per diem. Every day of detention at the place of attachment or sale, which may be compulsory, and beyond the control of the ameen, will be charged for in addition at the above rate, and the remuneration of one day will be paid to the ameen on the occurrence of the second contingency, should the sale have been stopped in time enough to prevent the departure of the ameen from his usual abode, for the purpose of effecting the sale.—*Ibid*, par. 10.

437. The Circular orders of the Sudder dewanny adawlut, No. 4434, dated 31st December, 1841, prescribe rules for the remuneration of ameens, who may be employed on any specific duty by the Civil courts and make the deputation of an ameen into the mofussil for the performance of certain local acts, described in the two first clauses, subjoined to paragraph 2 of Circular order, contingent on the prior deposit in court, of the amount to which, on completion of the work committed to him, he may be entitled. While paragraph 9 of the same Circular declares the amount of commission legally receivable by ameens for the duty of attaching and selling property, and paragraph 10 makes provision for their compensation, on the occurrence of certain contingencies therein alluded to, the omission to make the pre-payment of such dues a condition of the deputation of an ameen into the mofussil, has been found productive of much inconvenience and occasional hardship.—*Cir. Ord. 21st Aug. 1843, par. 1.*

Reference to the preceding rules of the C. O. of 31st Dec. 1831.

438. The commission of one anna in the rupee, on the proceeds of sale can of course only be levied on completion of that process; but an ameen appointed to attach and sell property will, the Court remark, under any circumstances, be entitled to the remuneration described in the 10th paragraph of the Circular order above cited, and the exaction of pre-payment to that extent, with the condition of a corresponding allowance being made in calculating the commission receivable by the ameen on completion of sale, will secure to the ameen the timely reception of his just compensation, and will relieve the court, by which the process may have been issued, from the necessity, now too frequent, of having recourse to harsh measures for the subsequent realization of ameen's fees.—*Ibid*, par. 2.

Previous exactment of the remuneration of the A. necessary

439. The Court, therefore, direct that whenever an application for the attachment and sale of property in execution of a decree shall be presented, the decree-holder shall be required to deposit in court the amount of compensation, to which the ameen will be entitled under the 10th paragraph of the Circular order, and the ameen shall on no account be deputed, until such sum have been paid in: if the sale be carried out to completion, the decree-holder will be allowed credit for the amount thus pre-paid, in calculating the demand to which he would be liable for the commission of one anna in the rupee on sale proceeds, and a comparatively small proportion will remain to be collected; and if, on the other hand, any one of the contingencies described in the three first clauses of paragraph 9, occur, the remuneration claimable by the ameen will be ready for delivery, without subjecting the decree-holder to the harassing demands of the court, or the ameen to the hardship which delay in the realization of his dues might occasion.—*Ibid*, par. 3.

The decree-holder must deposit the compensation of the A. in court

Subsequent adjustment of this compensation.

440. It is at the same time provided, that the total amount receivable by the ameen under the above rule, (436) shall, in no case, exceed the amount he would have got if the sale had been effected in due course.—*Cir. Ord. 31st Dec. 1841, par. 11.*

Limitation of the total amount receivable by the A

441. In the fourth and last contingency mentioned, the Court deem it just that the

Extent of remuneration

ration in the fourth contingency, and the party by whom it is to be paid.

ameen, where the sale, having taken place, may be reversed, receive the full commission of one anna in the rupee on the proceeds of the sale, as he will have been subjected to the same labour and expence, and have incurred the same responsibility as if the sale had been confirmed. The court ordering the sale will in such case determine by which of the parties the cost incurred, on this account, as well as when the sale may be stayed by an order of the court, shall be ultimately borne. When the decree-holder may file a razeenamah, the commission of the ameen shall be recovered from him, leaving him to make his arrangements for obtaining reimbursement of the amount in any compromise concluded with the opposite party, but when the sale may be stayed owing to the payment into court, or to the ameen, of the demand by the opposite party, such payment shall also include the ameen's commission calculated under whichever of the foregoing rules may apply to the case, and which should first be paid to the ameen before any payment is made to the decree holder.—*Ibid.* par. 12

Delivery of possession of property sold by A to the auction purchasers and the role of remuneration for it.

442. Ordinarily the delivery of possession to auction purchasers of property sold by ameen is to be considered as included in the duty for the performance of which the ameen receives the commission of one anna in the rupee on the sale proceeds, but where the delivery of possession may have been unduly resisted, it will form a separate case, falling within the rule laid down in paragraph 1 of this letter, and be dealt with accordingly.—*Ibid.* par. 13

A mohurrir and mullee may be appointed with the A for the measurement of land. An assistant may be appointed where the duties are heavy. No larger allowance than 12 as a day can be given to the A.

443. The following questions were submitted by the Judge of Tipperah, with reference to the Comr's printed Circular order, No. 177, dated 31st December, 1841. (Western Court, 17th January, 1842.) relative to the duties and remuneration of ameen.—1. When the measurement of lands, in addition to other local enquiries, becomes necessary, may the court appoint a mohurrir and a mullee or mullees, subordinate to the ameen, with allowances not exceeding those of the ameen, but in addition thereto? 2. In giving possession of lands, so extensive as to render it impossible for one ameen to complete the duty within a moderate period, may the court appoint an assistant or assistants on separate allowances not exceeding those of the ameen? 3. Has the court no power to appoint an ameen to give possession, with larger allowances than twelve annas per diem, however extensive the lands may be, and however important the duty?—The reply to the first and second questions was in the affirmative, and to the third in the negative.—*Con.* 1337, *Cal. C.* 13th May, *West. C.* 3d June 1842.

Order by a court to refund a portion of the allowance to an A cannot be contested by a regular action against the party charged with the cost.

444. The order of a court directing a refund of a portion of the allowance granted by a lower court to an ameen for conducting a local investigation, cannot be contested by a regular suit against the party charged with the cost of the investigation.—*Rep. Sum. Cases*, 13th Dec 1841, p. 19

Swearing the ameen to the truth of his report after it is made.

445. Where an ameen had not been sworn, previous to deputation under Section 17, Regulation 1, 1793, but had been subsequently sworn to his report, two Judges admitted a special appeal, from the doubt, but one Judge judicially determined that defect was cured.—*S. D. A. Sel. Rep.* 10th Jan. 1833, vol. 5, p. 261.

A who have taken a general oath of office, need not swear to the truth of each separate report.

446. A question having been raised, as to the necessity of swearing ameen, appointed under the Circular order No. 197, Lower Provinces, 13th January, and Western Provinces, 10th February, 1837, to the truth of the reports delivered in by them, the Courts of Sudder dewanny adawlut have ruled that, as Moonsiffs, who might be employed as ameen by Sections 50 to 53, Regulation 23, 1814, were not required to attest on oath the truth of their

returns, because they had taken and subscribed an oath of office as prescribed in Section 11 of that Regulation, it is in like manner, unnecessary to swear ameens to the truth of each separate return, after they have taken a general oath of office on their appointment, as they are ministerial officers of the court.—*Cir. Ord. 17th Sept. 1847, par. 1.*

447. Section 54 of the Regulation cited, sanctions the deputation of the ministerial officers of the courts to transact ameen's duties; and the reports of such officers, who have been on their appointment sworn according to Regulation 13, 1793, and Regulation 12, 1803, or have subscribed the declaration substituted for oaths by Section 2, Regulation 18, 1817, may equally be received as evidence.—*Ibid, par. 2.*

The reports of ministerial officers of the courts, who have taken the oath of office, may be received as evidence.

448. Upon this view of the law, the Courts deem it proper that ameens, appointed under the Circular order above mentioned, be uniformly required to subscribe, on their appointment, the declaration prescribed by Section 2, Regulation 18, 1817, and that when their reports are referred to as evidence, the fact of such subscription be set forth in the decree, as indicated in Rule 8 of the Circular order No. 8, dated the 12th February last.—*Ibid, par. 3.*

A. must take the oath of office on their appointment, and the fact of their having been sworn must be set forth in the decree.

449. Ameens appointed under the Circular, from whom such subscription may not have been required, are to be called upon to conform to the rule.—*Ibid par. 4.*

A. who have not taken the oath of office must subscribe it

450. Deputed as occasional ameens, not being sworn ministerial officers, are to attest on solemn declaration the truth of the reports delivered in by them, as enjoined by Section 17, Regulation 4, 1793 and Section 18, Regulation 3, 1803.—*Ibid, par. 5.*

Occasional A. must swear to the truth of their separate reports

It being considered desirable that proper attention should be paid to the proceedings of the ameens appointed under the Circular order, No. 197, 13th January, 1837, to ascertain that they perform their duties in a satisfactory manner, and with sufficient promptitude, and that no more persons are appointed to the office than the amount of business actually requires, the Court request that you will direct the ameens in your district to submit to you a monthly statement showing how they are employed each day, the work assigned to them from time to time, and the period within which it is disposed of. A cursory inspection of the statements will show you what degree of attention is paid by the ameens to their duty, and whether the number of those officers is sufficient for or inadequate to the work in the district.—*Cir. Ord. 4th June 1841.*

The A. will submit a monthly statement of the mode in which they are employed each day.

452. It has been ruled by the Court that ameens so appointed have the constructive power, under Clause 3, Section 2, Regulation 7 of 1825, of selling real as well as personal property in satisfaction of decrees.—*Cir. Ord. 7th Feb. 1840.*

Ameens so appointed may, constructively, sell real as well as personal property

453. The power of employing Moon-siffs or ameens in any of the above mentioned duties has been extended, as regards the execution of decrees, by the provisions of Section 22, Regulation 5 of 1831, and Section 7, Regulation 7 of 1832, to the Native Judges, who are authorized to execute their own decrees under the same rules as are applicable to the zillah and city Judges.—*Cir. Ord. Cal. C. 13th Jan., West. C. 10th Feb. 1837, par. 3.*

The Native Judges are empowered to employ A. in the execution of their decrees.

454. In regard to enquiries directed by the Judges of other districts, the Court direct me to observe that whether any fees can be levied or not, must depend upon the nature of the enquiry.—*Con. 1078, Cal. C. 10th March, West. C. 31st March 1837, par. 2.*

If enquiries are ordered by the J. of other districts, the question of fees must be decided by the nature of the enquiry.

455. The Moon-siffs are competent, in the same manner as other judicial officers, to depute an ameen for the purpose of making local investigations, when such a measure may appear

Moon-siffs may depute an A. to make local investigations



necessary, and, in this department of their duty, should be guided by the Regulations on the same head applicable to Zillah courts. The same rule applies in cases of resistance or evasion of process, subject to the restriction contained in Section 7, Regulation 7, 1832.—*Car. Ord. West. C. 26th July, Cal. C. 1st Nov. 1833, par. 10.*

But they cannot depute a mohurrir, or other person, to make the investigations required by other courts. When the M cannot leave his station for this purpose he must report the case to the Judge.

456. With reference to the third paragraph, I am directed to observe, that though under the Construction contained in the tenth paragraph of the latter circulated on the 1st November last, the Moonsiffs may depute ameen to make local investigations in regular suits pending before them, they cannot depute a mohurrir or other person to make such as they themselves may be required to make by the different courts. If the Moonsiff cannot leave his station for the purpose of making such investigations, without materially interfering with his more special duties, he should represent the circumstance to the Judge, who can depute any other person to perform the duty.—*Con. 863, 14th Feb. 1834.*

Court may depute A, where local investigations may be necessary in disputes regarding real property.

To what points the A is to be sworn.

Report to be made by the A daily attended on a certain day.

Court to order such sum to be paid to the A as it may judge adequate to his trouble.

By whom the sum ordered is to be paid. Precaution to be observed by the courts in awarding such sums.

457. In cases of disputed property regarding lands, houses, or their limits or boundaries, in which the court may deem a local investigation proper, the court is to appoint an ameen who is to be sworn to make a true and faithful report to the court of the several matters which he may be directed to investigate, and not to take or receive, directly or indirectly, from either party, any gratuity, reward, or consideration, besides the sum which may be allowed to him by the court. The ameen is to be ordered to make his report in writing, subscribed with his name, and to deliver it into court on a certain day, which is to be specified in his commission. The report is to be received by the court, as evidence in the cause with regard to the matters which the ameen may be commissioned to investigate, and no other. The court may order such sum to be paid to the ameen as may be thought reasonable for his trouble, and the amount is to be added to the costs, and paid by the person against whom the decree may be passed. But the court is to be careful that expenses are not unnecessarily incurred by the ameen by delay or other means.—*Reg. 4, 1793 Sect. 17.*

Yakeels may be put to make enquiries.

458. I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether you are at liberty to depute yakeels of your court to make local enquiries as ameen. In reply, I am directed to inform you that the Court are aware of no Regulation which prohibits the practice, but may consider the measure as of doubtful expediency in general.—*Con. 901, West. C. 26th Sept., Cal. C. 24th Oct. 1834.*

A zillah judge may pass an order for the dismissal of an A, subject to an appeal.

459. Held, on a reference from the Judge of Futtchpore, that as the ameen appointed under the Circular order of 15th January (Western Provinces, 10th February,) 1837, are ministerial officers of the Zillah courts, it is competent to a zillah Judge to pass an order for the dismissal of an ameen, of his own authority, subject to the usual appeal allowed by law.—*Con. 1271, West. C. 16th Jan., Cal. C. 2d Feb. 1840.*

## SECTION XXVII.

*Stamps—on Deeds, Instruments and Writings.*

460. In the judgment of the Honourable the Governor of Bengal, Section 2, Regulation 10 of 1829, must be held, as ruled by the Sudder court at Allahabad, to rescind Clause 7, Section 30, Regulation 2 of 1819, in common with all other parts of the existing Regulations relating to the imposition, levying and collecting of stamp duties.—*Con. 987, Cal. and West. C. 17th Nov. 1835.*

Reg. 10, 1829 has repealed every previous reg relative to stamp duties.

461. Stamp duties shall be levied, raised, and paid, as heretofore, upon the deeds, instruments, and writings, and according to the rates specified in the Schedule A, annexed to this Regulation, from and after the date of the promulgation thereof, and no deed, instrument or writing executed in any place whatsoever on the continent of India and relating to the payment or receipt of any sum of money, or to the sale, conveyance, assignment, or transfer of any property, real or personal, being within any province or place to which this Regulation extends, or of any interest in such property, or relating to any agreement, contract obligation, engagement or settlement intended to have effect within any province or place as aforesaid, (such deed, instrument, or writing being of a description chargeable with stamp duty, under the rules of this or any other Regulation,) shall be pleaded, given in, or admitted in evidence, or otherwise received or filed in any Court of judicature or other public office, within the provinces subject to the Presidency of Fort William, unless the paper, vellum, or other material on which such deed, instrument or writing may be written, shall be stamped with the stamp prescribed for such deed, instrument, or writing in the said schedule, and the schedule aforesaid shall be deemed and considered to be to all intents and purposes, part of this Regulation.—*Reg. 10, 1829 Sect. 3, Cl. 1*

Stamp duties to be levied and paid on deeds as per sch. A

No deed executed in any place on the continent of India shall be received in any native court unless written on paper bearing the prescribed stamp

462. Provided however, that no exception shall be taken to any deed, instrument, or writing not executed on paper or other material bearing a stamp of the specific denomination prescribed in the schedule hereinto annexed, if such deed, instrument, or writing shall bear a stamp or stamps of an amount exceeding that so prescribed, or if when of a date anterior to the passing and promulgation of this Regulation, the stamp borne by the paper or other material of the deed, instrument, or writing corresponds with the rate of duty chargeable on the same, at the time when such deed or writing was executed.—*Ibid, Cl. 2.*

No exception on account of overvalue

Nor to prior deeds if stamped as prescribed at the date of execution

463. When a different stamp may be in use for Calcutta and for the interior, no exception shall be taken to any deed, document, or writing as bearing an undue stamp, because stamped with the Calcutta die when intended to have effect in the interior, provided the deed or document and the stamp impressed thereon be in other respects correct, and the amount of duty indicated by the stamp correspond with that prescribed in this Regulation.—*Ibid, Cl. 3.*

Nor on account of a different die in use in Calcutta being impressed on a deed intended for the interior

464. If any deed, instrument, petition, pleading or other writing, required to be

Penalty for filing or

recording paper not  
duly endorsed.

written on stamped paper and written on the prescribed stamped paper, shall be filed, exhibited, or recorded in any Court of judicature or public cutcherry, or before any Judge, Collector, Register or other public officer, not bearing the signature and endorsement of a licensed stamp vender, (or not procured in the manner prescribed by this Regulation and duly certified to be so when not obtained from a licensed vender,) the person or persons filing, exhibiting, or recording the said deed, instrument, petition, pleading or writing, or causing or procuring it to be filed, exhibited, or recorded, shall forfeit a sum equal to five times the value of the said stamped paper; and if any deed, instrument, petition,

Proceeding to be  
followed in a case of  
forged stamp being  
filed

pleading or document shall be filed, exhibited, or recorded as aforesaid, having a forged or counterfeit stamp or signature, the person filing, exhibiting, or recording such deed, instrument, or document, that is to say the party or his agent who may have produced the same for the purpose of being filed, exhibited, or recorded, shall forfeit to Government a sum equal to twenty times the value of the stamp, which ought to have been used, unless the material on which the same may be executed shall bear the signature and endorsement required by this Regulation, and the party shall be able to shew to the satisfaction of the zillah Judge, or Collector, or other officer conducting the enquiry on the part of Government as hereinafter directed, that the material stamped with a forged stamp was purchased or obtained on the date and in the manner specified on the back, or was otherwise procured in some manner prescribed or permitted by this Regulation. If the said signature and date shall be duly endorsed on the back of the material stamped as aforesaid with a forged impression, and the proof adduced to the fact, and to the date of purchase, be deemed by the Judge or other officer before whom or in whose office the deed, instrument or other writing may have been filed, exhibited, or recorded to be sufficient, that officer, if not himself the Collector, shall transmit the document to the Collector with a communication of his judgment in the case, in order that proceedings may be instituted against the vender: and the Collector, on payment by the party of the established duty chargeable on account of the matter of the instrument or deed in question, shall forward it to the Superintendent of Stamps, in order that it may be duly stamped the amount so paid being recoverable from the vender, or from any fine levied from him on account of the transaction. *—Id., Sect 13, Cl 1.*

Rules regarding  
the affixing of stamps  
to unstamped or in-  
adequately stamped  
documents

467 The Honourable the Deputy Governor of Bengal, in concurrence with the Honourable the President in Council, is pleased to resolve that the following Rule be adopted in modification of Clauses 4 and 5 of the "Rules regarding the Superintendence of Stamp Revenue and the powers of the Board and Revenue Commissioners," prescribed in the Resolution of the Government dated the 4th August, 1829.—*Rule.*—The authority vested in Commissioners of Revenue by the 4th and 5th clauses of the "Rules regarding the Superintendence of the Stamp Revenue and the powers of the Board and Revenue Commissioners," prescribed in the Resolution of the Government, dated the 4th August, 1829, is hereby transferred to the Superintendent of Stamps, to whom officer references by Collectors or other functionaries in charge of this branch of the revenue regarding the affixing of stamps to unstamped or inadequately stamped documents shall be made. Collectors or other functionaries aforesaid, on the presentation of such documents to be stamped, are required to levy the penalty to which they consider them

liable, in addition to the value of the stamp, or the difference of value when the document bears a stamp of inadequate amount. The documents are then to be transmitted to the Superintendent of Stamps, who, if he concurs in the award of the Collector or other officer by whom the documents have been transmitted, will cause them to be properly stamped and returned immediately to that officer. If the Superintendent shall see cause to differ from the Collector in opinion in regard to the amount of the stamp to be charged or the penalty to be awarded, he shall without delay refer the proceeding of the Collector, and the reasons for his difference of opinion with that officer, to the Board of Customs, Salt and Opium, whose decision shall be final. In cases which come by this rule under the cognizance of the Board of Customs, Salt and Opium, where the decision of the Collector shall be modified or reversed by that authority, the Collector will refund any surcharge or levy any additional penalty, according to the award recorded by the board. The board shall nevertheless continue in the exercise of the power with which it is vested by Clause 5 of the Rules that are hereby modified, to remit penalties in excess of the Government duty, whenever under the circumstances established before that authority, a party subjected to a penalty shall appear to be a fit object for the mitigation thereof. — *Govt. Rules, 26th April 1843.*

466. In modification of the rules contained in Construction No. 1161, (page 19) of printed Construction Book, and Circular order dated 3d January, 1840. (printed ed. vol. 3, part 3,) which are hereby cancelled, the Court of Sudder dewanny adawlut for the Lower and Western Provinces prescribe for the future guidance of the courts under their respective jurisdictions, the rules which follow. — *Civ. Ord. 7th Jan. 1842.*

467. It is discretionary with a Civil court to give a reasonable time to a party presenting a document requiring a stamp, but written on plain paper, to apply to the revenue authorities for the purpose of having it stamped. The above is to be considered only applicable, as regards defendants, to the occasion of a defendant presenting such a document, on which his defence is founded, or by which it is supported, when the ends of justice may appear to require the indulgence being granted, and, in respect to plaintiffs, to very special cases, as rare exceptions to the general rule, which should be to non-suit a plaintiff, presenting a document of the above description either as the ground of his claim, or in support thereof. Whenever the indulgence is granted, the special reasons for according it should be distinctly stated in a separate proceeding. — *Ibid, par. 1.*

Cases in which time is to be given to parties to apply for affixing a stamp to the unstamped documents they present.

468. It is discretionary with a Civil court to give a reasonable time to a party presenting a document bearing an improper stamp to apply to the revenue authorities for the purpose of having the proper stamp affixed. The above should be the general rule when such a course is thought necessary for the ends of justice, and the refusal to give time in such cases should form the exception. — *Ibid, par. 2.*

Civil court may at its discretion allow time for affixing a proper stamp to a document inadequately stamped.

469. The principle of the two foregoing rules, and the remarks appended thereto, is to be held applicable respectively to cases in which documents written on plain paper, or on a stamp of inadequate value, may have been already filed. — *Ibid, par. 3.*

These rules apply to documents which may already have been filed.

470. The courts shall reject at once documents presented in miscellaneous cases of the sort described in Rules 1 and 2, whether written on plain paper, or insufficient stamp. — *Ibid, par. 4.*

Documents in miscellaneous cases to be rejected if unstamped or inadequately stamped.

471. A deed is admissible as evidence in a Court of justice upon which the proper stamp

Admission of a deed

in evidence which has been stamped by order of any Commissioner of Revenue, on the representation of any Collector subordinate to his authority.—*Ibid.*, par. 5.

The civil courts cannot decide on the powers of the revenue authorities in respect of each other.

172. It is not the province of the Civil courts to decide upon the powers of the revenue officers in respect to each other, but if a deed, when presented to a court bears the proper stamp, it should be received in evidence, without a question being admitted as to the competency of the authority by whose orders such stamp was affixed. —*Ibid.*, par. 6.

A deed declared by the revenue authorities exempt from stamp duty must be received by the courts.

473. The Judge of Dacca having directed the return of a document written on plain paper, in order to have a stamp affixed, which the revenue authorities were of opinion did not require a stamp, it was held, on a reference from the former officer, that as the law vests the revenue local authorities, and the Board of Customs, Salt and Opium, with the power of determining points of the kind mooted, a deed declared by such authority exempt from stamp duty, must be received by the courts.—*Con.* 1331, *Cal. C. 1st, West. C. 15th April 1842.*

Rule where a special appeal has been admitted in a case originally decided on a deed not stamped or inadequately stamped.

474. A special appeal having been admitted in a case originally decided on the evidence of a deed bearing an improper stamp, or requiring a stamp but written on plain paper, the decisions of both the lower courts should be set aside, and the Court of first instance directed to restore the case to its original number on the file, and after exercising its discretion in regard to granting or not granting the party who presented the deed an opportunity of remedying the defect in it in the mode laid down in Rules 1 and 2, (as either may apply,) to dispose of the case accordingly. —*Ibid.*, par. 7.

Collector's receipt for penalties not sufficient, the document must be stamped.

475. The Collector's receipt for the amount of the penalty is not sufficient to legalize a document: it must be submitted to the Superintendent to be stamped.—*Con.* 6, *3d April 1805.*

Merchants' account books need not be stamped.

476. In reply to your letter of the 7th ultimo, requesting the opinion of the Court of Sadar dewanny adawlut whether, with reference to Section 3, Regulation 10, 1829, and Schedule A. therein alluded to, account books kept by merchants and shop-keepers for money paid or received, or for goods delivered, &c. &c. and not written on stamped paper, are to be admitted or not as evidence in a Court of justice: I am directed to inform you, that there being no Regulation which requires account books to be written on stamped paper, the Court are of opinion, that they should be considered admissible as evidence, although written on unstamped paper.—*Con.* 592, *6th May 1831.*

Bhye-khatas, or account books, need not be stamped.

477. I am directed to communicate to you the opinion of the Court, that account books (*khatabukhs*) cannot be considered to fall within the description of any of the documents required to be written on stamped paper, by the provisions of Section 11, Regulation 1, 1814.—*Con.* 275, *2d July 1817.*

When a person affixes his name as security for a balance, at the foot of an account in a banker's account book, the leaf in the account book must be stamped to make the security available.

478. I am directed by the Court to forward their reply to the question contained in yours of the 29th of the preceding month—*Question*.—An account of a party is made up, and the balance struck and stated, according to established usage, at the foot of the sheet in the bhye-khata or banker's book of account: a third party renders himself responsible for the eventual adjustment of such balance, by affixing his name in the capacity (to all intents and purposes) of security for the debtor's discharge of the creditor's claim. Will the guarantee as above described, of the third party, be vitiated by the fact of the said security, &c. being on unstamped paper?—*Answer*.—To make the security available to the claimant, the leaf in the account book on which it is written must be stamped (as it still may be under Section 14, Regulation

10, 1829.) At the same time, in the event of that course not being adopted, it rests with the claimant, in order to derive benefit from the security, to adduce other sufficient evidence of its having been given, independently of the paper exhibiting it, which in its present state cannot be legally received in proof of the fact.—*Con.* 970, *Cal. C.* 7th Aug., *West. C.* 4th Sept. 1835.

479. Where in a separate leaf of a merchant's books an entry of a sum advanced to an individual has been made in the form of a bond by the debtor, bearing interest, and regularly signed and attested, the Court consider that the leaf having no stamp, the writing must be treated as a bond on plain paper; and rejected in toto.—*Con.* 325, 18th Aug. 1820.

An entry in a merchant's account book, in the form of a bond duly signed and attested, must be rejected unless the leaf be stamped.

480. The Court having again had before them your letter, under date the 21st June last, direct me to inform you, that the Circular therein adverted to, (as is manifest as well from the preamble, as from the reference made in it to the letter addressed to the Late Dacca Provincial court on the 18th August, 1820, No. 325 of the Construction book,) was intended merely to point out that bonds, timuseeks, or other obligations for the payment of money, entered in merchants' books could not be received, as such, in evidence in a civil suit, unless the paper on which they were engrossed, bore the stamp prescribed for instruments of that nature in Article 7 Schedule A. Regulation 10 of 1829, and not in any way to prohibit the admission of books of account as evidence in like manner as heretofore, it being expressly laid down in the letter written to the Judge of Zillah Tipperah on the 6th May, 1831, No. 592 of the Construction book, that there being no Regulation requiring account books to be written on stamped paper, they should be considered admissible as evidence, although written on unstamped paper, which Construction it certainly was not the intention of the Circular, referred to in your letter, to superseide.—*Cal. Ord.* *West. C.* 3d, *Cal. C.* 31st Aug. 1838.

Explanation of *Con.* 325 and 592.

481. *Schedule (A) referred to in Section 3 of the Regulation, containing a specification of the duties chargeable on instruments of conveyance, contract, obligation, and security for money, and on deeds in general.*

1. *AGREEMENT, IKRAR, or any minute, or memorandum of an agreement concerning any matter or thing, not otherwise charged in this schedule, nor expressly exempted from all stamp duty, whether the same be only evidence of a contract or obligatory upon the party — if relating to matters capable of valuation, and with the value stated,*

To be charged as hereunder prescribed for bonds of the same

*AGREEMENT* for a monthly or annual payment. ... ..

To be estimated as the amount of ten years' payment, or of the total sum secured,

*AGREEMENT* to perform any legal act, or for a purpose not restricted to, or specifying any amount, ... ..

To be executed on such stamp as the parties may determine, but no recovery can be made on the instrument in any court of justice of a larger amount than may be covered by the stamp at the rate prescribed in the schedule for bonds

## EXEMPTIONS.

*Memorandum of agreement for the hire of labour.*

*Ditto all agreements carried on by letter through the public dock between merchants and other persons.*

4. **BILLS OF EXCHANGE, DRAFTS, PROMISSORY NOTES, HOONDEES, TEEPS, BURATS,** and other orders or obligations for the payment of money, payable (if payable within the provinces subordinate to this Presidency) at sight, or on demand, or at the periods specified below (not being deeds, instruments, or writings, bearing the attestation of one or more witnesses,) together with all bills of exchange payable out of the said provinces at whatever date.

				At sight or on demand, or not exceeding three months, to be charged			Exceeding three months after date, and not exceeding one year, to be charged		
				Sa	Rs	As	Sa	Rs	As
If for a sum of money not exceeding	...	25	Rs.	0	1		0		2
Above 25 Rs. and not exceeding	...	50	"	0	2		0		4
" 50 " ... Ditto	...	100	"	0	4		0		8
" 100 " ... Ditto	...	200	"	0	8		0		12
" 200 " .. Ditto	...	400	"	0	12		1		0
" 400 " ... Ditto	...	800	"	1	0		1		5
" 800 " ... Ditto	...	1,600	"	1	8		2		0
" 1,600 " ... Ditto	...	3,000	"	2	0		2		8
" 3,000 " ... Ditto	...	5,000	"	2	8		4		0
" 5,000 " ... Ditto	...	10,000	"	4	0		6		0
" 10,000 " ... Ditto	...	20,000	"	6	0		8		0
" 20,000 " ... Ditto	...	30,000	"	8	0		12		0
" 30,000 " ... Ditto	...	50,000	"	12	0		16		0
" 50,000 " ... Ditto	...	1,00,000	"	16	0		20		0
" 1,00,000 " ... ..	...	...	"	20	0		25		0

\* A bill to be negotiable must be accepted and must be stamped.

182. Held by a majority of both Courts, that the hoondee, having been negotiated after acceptance, cannot be admitted in court as a legal instrument, except on stamped paper, or with a copy on paper bearing the prescribed stamp.—*Con. 1279, West. C. 19th June, Cal. C. 11th Aug. 1810*

- No 5. **BILLS OF EXCHANGE, PROMISSORY NOTES, &c.** in-  
tended to be re-issued, .. .. . { Shall be charged  
as prescribed for promissory notes payable at a date exceeding 3 months.
- 6 **BILLS OF EXCHANGE, PROMISSORY NOTES, &c.** of date  
exceeding one year, .. .. . { To be charged as bonds.

*Note.*—The Governor General in Council reserves to himself the power of admitting any bank or company to compound for the stamp duty chargeable on the promissory notes issued by it. Notice of such arrangements shall be given in the Government Gazette.

## EXEMPTIONS.

*Bills of exchange or hoondees for any sum of money if drawn bonâ fide from any place distant more than 100 miles from the place where the same are made payable, and not negotiated after acceptance, also foreign bills of exchange drawn in sets.*

Provided, however, that if any bill or bills of exchange drawn in any part of the continent of India, and made payable in the provinces, subject to this Presidency, shall be negotiated therein after acceptance, or be in any way transferred after acceptance to a third party other than the acceptor and the payee of such bill or bills, the exemption shall not hold in respect to any such negotiated bill or bills, unless the same shall be taken to be stamped prior to such negotiation, or unless there be affixed to each bill a copy of the same executed on paper stamped with the stamp to which such bill is declared liable in this schedule. \*

## EXEMPTIONS CONTINUED.

*Bills of exchange drawn and promissory notes, &c. issued by Government officers authorized to draw bills upon the Government treasuries, or to issue promissory notes or other acknowledgments on account of Government.*

*All drafts or orders for the payment of any sum of money to the bearer on demand, drawn upon any bank, banker, or agent, residing within twenty miles of the place where such draft or order shall be issued, such place being specified on the face of the draft.*

*BILLS OF SALE*—See Conveyance and Mortgage.

7. *BONDS, TUMSOOKS* and other attested obligations for the payment of money, also *PROMISSORY NOTES* and *BILLS OF EXCHANGE, TEEPS, BURATS*, and the like, of date exceeding one year.

								Rs.	Rs.	As.
If for any sum not exceeding ...	...	...	...	...	25 Rupees,	0	2			
Above	25 Rs. and not exceeding	...	..	..	50 „	0	4			
„	50 „	...	Ditto	...	100 „	0	8			
„	100 „	...	Ditto	..	200 „	1	0			
„	200 „	...	Ditto	...	300 „	2	0			
„	300 „	...	Ditto	...	500 „	4	0			
„	500 „	...	Ditto	..	1,000 „	6	0			
„	1,000 „	...	Ditto	...	2,000 „	10	0			
„	2,000 „	...	Ditto	...	3,000 „	16	0			
„	3,000 „	...	Ditto	...	5,000 „	20	0			
„	5,000 „	...	Ditto	..	10,000 „	32	0			
„	10,000 „	...	Ditto	..	20,000 „	40	0			
„	20,000 „	...	Ditto	...	50,000 „	64	0			
„	50,000 „	...	Ditto	...	75,000 „	70	0			
„	75,000 „	...	Ditto	...	1,00,000 „	80	0			
„	1,00,000 „	...	Ditto	...	1,50,000 „	100	0			
„	1,50,000 „	...	Ditto	...	2,00,000 „	120	0			
„	2,00,000 „	...	...	...	...	150	0			

and a further duty of 100 rupees for every sum of one lakh in excess of the said amount of two lakhs of rupees.



The fact of two or more distinct debts due by different individuals being included in the same stamp does not vitiate the deed, if the stamp be sufficient to cover the whole amount of the sum lent.

483. I have the honour to solicit the Court's construction, as to the legality of a Judge receiving a tumusook filed by a plaintiff suing for the amount, wherein money is stated to be lent to two persons unconnected with each other. Thus five rupees in the bond is stated to be lent to A. and twenty-nine rupees to B.; these persons are as far as I can judge unconnected, and even unknown to each other; it is in evidence the loans are embodied in one bond to evade the stamp duty the bond comes under, (on account of its date, Regulation 1 of 1814.) which prescribes that bonds for these two sums should be written on paper of the value of two annas each. If I admit this document and decree on it, I afford means of defeating the intent of the Stamp Regulation. - I am directed by the Court to inform you that, provided the value of the stamp be sufficient, under the Regulation in force at the time the bond was executed, to cover the total amount of thirty-four rupees, the fact of two distinct and separate debts, one of five and the other of twenty-nine rupees, due by different individuals, being engrossed thereon, would not vitiate the deed.—*Con. 1087. West. C. 23d March, Cal. C. 21st April 1837.*

Claim to recover a debt on a bond written on an improper stamp, rejected.

484. Claim to recover a debt on bond rejected, it appearing that the stamped paper on which the bond was executed in the year 1813, was of the kind prescribed for use by Regulation 6, 1797, which had been altered by order of the Board of Revenue, in 1801.—*S. D. A. Sel. Rep. 5th April 1824, vol 3, p. 328.*

The principal of a loan, without the interest payable thereon, will regulate the value of the stamped paper on which the deed must be written.

485. In the case of bonds or other engagements for a principal sum of money, bearing interest, whether the amount of interest payable at the expiration of the stipulated period be specified in the bond, or other engagement, or not, the principal of the loan being the immediate sum advanced, and for which it is executed, without the interest payable at a future period, is meant to regulate the value of the stamped paper, on which the deed is required to be executed by the provisions of Section 11, Regulation 1, 1814—*Car. Ord. 20th April 1818.*

No. 9. BONDS, given as security for the transfer of Government securities, or for the payment of an annuity for a fixed period, or for the delivery or accounting for any matter or thing capable of being valued, ... { Shall be charged at the rate of the amount engaged to be paid or accounted for, or at the value of the thing to be delivered or transferred

BONDS, for annuities for an indefinite period, such as life annuities, and the like, .. .. . { Shall be charged at the rate of the times the yearly payment

10. BONDS, when the amount of the money to be secured, or ultimately recovered shall be uncertain and unlimited, .. .. . { May be executed on such stamp as the party may please, but no recovery shall be made thereon in any court of justice of a larger amount than is covered by the stamp.

11. BONDS, for the due execution of an office, or work, muchulkas, and the like taken by individuals, and all other bonds not otherwise charged or exempted from duty, .. .. . { On optional stamp as above, with like condition.

12. When the amount is limited to a certain sum, .. .. . { The same as on a bond for such limited sum.

Where an account

486. *Question 1st.*—The sicca rupee being abolished, are all accounts in future, in suit-

filed in court, to be settled at par, or where the agreement was in sicca rupees, is the calculation to be made at Company's rupees 106-10-8 per 100 siccas?—*Answer*.—The question supposes that the agreement is for value and not for specific coins. The calculation will therefore be made at 106-10-8 Company's for 100 siccas, *i. e.* the intrinsic difference.—*Con.* 1151, 27th April 1838.

in suits filed in court in *sa. rs.*, title to be calculated at 106-10-8 co.'s *rs.*

487. *Question 2d.*—From the 1st January in the present year, are parties to be allowed to write bonds, deeds, &c. in sicca rupees, and then take exchange at Company's rupees 106-10-8, or must all agreements be drawn out in Company's rupees?—*Answer*.—It is not necessary that bonds, &c. should be drawn out in Company's rupees; they may be drawn in siccas, and then, if for value, they will fall under the last question. If for specific coin (as where a man may covenant to deliver so many coins of the sicca currency, or so many dollars,) the payment must be in the coin covenanted.—*Ibid.*

Bonds need not be drawn out in co.'s *rs.* If drawn in siccas, and for value, the siccas must be converted into co.'s *rs.* If for specific coins, the payment must be in the coin covenanted.

## EXEMPTIONS.

## ARBITRATION BONDS.

*BONDS, given to or by the officers of Government on account of any matter, or thing of, or belonging to the Government in its political or territorial capacity.*

No. 13. *SECURITY BONDS*, which may be taken by or by order of any court, Collector, or other judicial or revenue authority, also razeenamahs, sooluanamahs and ruffmanamahs, filed in any suit pending in a Court of justice, . . . . . } To be charged as specified and prescribed in Schedule B for law papers.

488. In reply to the first question contained in your letter, the Court have directed me to communicate to you their opinion, that a person becoming security for the payment of a bond, and affixing his name to the deed in recognition of his responsibility, is liable to be sued as a party with the principal, the transaction being as it were a joint one, and that it is not necessary to the admissibility of an action against him, that he should have entered into a regular security bond, on separate stamped paper of the same value as that of the original obligation.—*Con.* 341, 1st June 1821, *par* 2.

A person affixing his name to a bond as security, may be sued as a party with the principal; it is not necessary to his being sued that he should have given a regular security bond, on a separate stamped paper.

489. It has been brought to the notice of the Court that a practice obtains in some districts, of admitting as legal evidence security bonds written on the same sheet of paper with the principal deed where the stamp used was only of the value required for the latter instruments. As this practice is clearly erroneous, and deeds of the kind alluded to are wholly inadmissible as evidence against securities, the Court deem it proper to call your attention to the rule, and to request that you will make it known to the lower courts.—*Cur. Ord. Cal. C.* 27th Oct., *West. C.* 1st Dec. 1837.

Security bonds written on the same sheet of paper with the principal deed, of the stamp required for the latter, not admissible as evidence

490. I am directed to request that will submit, for the consideration of the Calcutta Court, the accompanying copy of a letter from the Judge of zillah Mynpooree, under date the 9th instant, relative to the Circular of the 27th October last, which originated with the Calcutta Court on the subject of security bonds. Mr. Begbie, it will be observed, considers the construction laid down in the Circular in question, opposed to that contained in the letter written to the Judge of the Jungle Mehals, under date the 21st June, 1821, No. 341, of the printed construction book. The Court direct me, however, to remark, that the construction adverted to by Mr. Begbie referred to the case of a person becoming security for the payment of a sum of money, and

Reconciliation of the apparent incompatibility of *Con.* 341, and the *C. O.* 27th October, given above.

affixing his signature to the bond in recognition of his liability equally with the principal for the amount, the transaction being as it were a joint one, in which case it was held by the court that it was not necessary to the admissibility of an action against the surety that he should have entered into a regular security bond on separate stamped paper of the same value as that of the original obligation ; whereas the present construction has reference to a formal security bond executed on the same paper as the original instrument, which the Court have declared is not admissible under the Stamp Regulations as evidence against the surety ; the two cases are therefore, quite distinct, and the constructions are not, as supposed by Mr. Begbie, at variance with each other.—*Con. 1121, West. C. 9th, Cal. C. 29th Dec. 1837.*

- No. 14. *CHARTER PARTIES*, or any *AGREEMENT* of *CONTRACT* for the charter of any ship or vessel, or any memorandum, letter, or other writing between the captain, master, or owner of any ship or vessel, and any other person, for or relating to the freight or conveyance of any money, goods or effects on board of such ship or vessel,

If the amount payable under the deed exceeds one thousand rupees, eight rupees and if less than one thousand rupees, according to the scale prescribed for bonds

## EXEMPTIONS.

*Charter parties of ships or vessels taken up by Government for the conveyance of troops or military stores, or for other political purposes.*

15. *CONTRACTS* and *DEEDS*, if not otherwise charged or exempted from duty, ... .. } agreements.  
 16. *COPARTNERSHIP, DEEDS* of ... .. } Sa. Rs. 4  
 17. *COMPOSITION DEEDS*, or other instruments of composition between a debtor or debtors, and his, her, or their creditors, ... .. } 8 0  
 18. *CONVEYANCES*, (*KUTALAS, BYNAMAS, HIBANUTLAS*) or deeds or instruments of any kind or description whatsoever, executed for the sale or transfer for a consideration of any lands, tenements, rents, annuities or other property, real or personal, heritable or moveable, or of any right, title, interest or claim to, or upon any lands, houses, rents, annuities, or other property, that is to say, for or in respect of the principal or only deed, instrument, or writing whereby the property sold shall be conveyed to or otherwise vested in the purchaser or purchasers, or to some other person, by his or their directions.

When the purchase or consideration-money therein expressed or denoted shall

not exceed	50	Rupres,	0	8
Above	50 Rs.	and not exceeding	100	1 0
100	...	Ditto	...	2 0
200	...	Ditto	...	4 0
500	...	Ditto	...	8 0
1,000	...	Ditto	...	12 0
2,000	...	Ditto	...	16 0
3,000	...	Ditto	...	20 0
5,000	...	Ditto	...	32 0
8,000	...	Ditto	...	40 0
12,000	...	Ditto	...	50 0
20,000	...	Ditto	...	64 0
30,000	...	Ditto	...	80 0
50,000	...	Ditto	...	100 0
1,00,000	...	Ditto	...	150 0
and for every further lakh of rupees beyond two lakhs.	...	...	100	0

*Note.*—When, of several deeds, instruments, or writings, a doubt shall arise which is the principal, it shall be lawful for the parties to determine for themselves which shall be so deemed, and to engross the same on paper, parchment, vellum, or the like stamped for the prescribed ad valorem duty.

19. Provided, however, that in all cases where there are more deeds than one, all other deeds than the principal shall be charged with a like stamp to the principal deed if of value not exceeding eight rupees, (which sum shall be the maximum duty on collateral deeds,) and all such collateral deeds shall specify by their contents, which other is the principal deed by which the conveyance has been effected, certifying that it is executed in the manner and on material stamped as required.

## EXEMPTIONS.

*All grants, leases, sales, or the like, wherein Government, in its political or territorial capacity, is a party.*

*Note.*—This exemption shall not extend to sales made for the recovery of arrears of revenue or rent, or in satisfaction of decrees of court, in which cases the purchasers shall be required to pay the prescribed duty along with the purchase-money, and shall receive from the officer conducting the sale, a deed of sale (bhyama.) executed on paper impressed with a corresponding stamp.

## EXEMPTIONS CONTINUED

*All transfers of subscriptions to any of the Government loans, or other Government securities, also of bank shares.*

491. Certain lessees of the ghaut dues have petitioned to be relieved of the expence of having their kaboohyuts and security papers drawn out on stamped paper. On referring to the Stamp Regulation 10 of 1829, I find it stated in Schedule A, under the title of conveyances, that "all grants, leases, sales or the like, wherein Government in its political or territorial capacity is a party," shall be exempted from the duties thereby declared generally applicable. I conclude that the ghaut renters are to be considered as holding "leases from Government, in its territorial capacity," and that they are accordingly entitled to the exemption above noticed; but as it has been the practice hitherto to employ stamped paper in this matter, I beg to refer the point for your decision.—In reply to your letter of the 21st August last I am directed by the Court to inform you that the case alluded to therein comes within the meaning of the exemption in Schedule A of Regulation 10 of 1829, and that the engagements, which the farmers of Government property are obliged to enter into, are not required to be drawn up on stamped paper.—*Con. 1111, West. C. 22d Sept., Cal. C. 27th Oct. 1837.*

Engagements entered into by farmers of public fields and their sureties need not be written on stamped paper

## No. 20. COPIES—COPY, or COUNTERPART of any deed or instru-

ment attested to be a true copy and furnished to a party to the same, for the purpose of being given in evidence for the recovery of any sum of money, property, interest, or right secured thereby, ...

The me duty as present for the original deed this regulation

21. Where such copy may be made for the security or use of any person not being a party to, or taking any benefit or interest immediately under the agreement, contract, bond, deed or other instrument, per sheet, ..

Sa. Rs.  
0

	Sa. Rs.	As.
22. <i>COPY</i> or extract of any deed, instrument, schedule, receipt, or other matter annexed to any agreement, contract, bond, deed, or other instrument, per sheet, ... ..	0	8
23. Authenticated copies of any records, letters, accounts, statements, reports, or other writings furnished to individuals from any of the public offices of Government, shall be written on paper of the size and description now used for the purpose, and called copy-paper at the Stamp office, and of the value for each and every sheet of, ... ..	0	8

For copies of judicial papers to be given from the Courts of justice, revenue cutcherries, &c. —see Schedule B.

Applications for copies are to be made on stamped paper, and the copy is to be written on one side only of the stamped paper.

492. The Court are of opinion that from the rules laid down in Schedule B, Regulation 10, 1829, it appears to have been the intention of Government that both the application for the copy (of proceeding or order) and the copy itself should be on stamped paper: the stamped paper assigned for the application being of a different value from that on which the copy is to be written. Sections 3 and 7 of the schedule seem to point out this construction as that which was intended by the Government: and this view of the subject is confirmed by Section 5 of the same schedule, which requires that even exhibits shall be accompanied by a petition when filed on the proceedings of a regular suit: it is also declared in Section 3, that the copy shall be written on one side thereof only —*Com. 773, West. C. 29th March, Cal. C. 26th April 1833.*

Copies or extracts of merchants' accounts and books kept for record must be made on a stamp of 8 as the sheet.

493. Held, on a reference from the officiating Judge of Hooghly, that copies or extracts of merchants' accounts and books, to be kept with the record, must be made on stamps of the value of eight annas per sheet —*Com. 1372, Cal. C. 20th Jan., West. C. 6th Feb. 1843.*

#### EXEMPTIONS.

*Copies made for the private use only of any person having the custody of the original instruments, or of his or her attorney or solicitor, and copies of deeds, &c. retained in public offices on returning the originals.*

*Copies of papers which public officers are directed by any general regulation to make, require, or furnish, not being specially declared chargeable with stamp duty.*

No 24. *DILDS*, of any kind, not otherwise particularized in this schedule, As agreements

25. *EXCHANGES* Any deed, whereby real property shall be conveyed, or surrendered in exchange for other property.

It no sum of money shall be paid or agreed to be paid for equality of exchange, 8 0

26. And if any sum of money be paid or agreed to be paid for equality of exchange, ... ..

27. *ENGAGEMENTS* to cultivate, provide, or deliver indigo plant, or to produce, manufacture, provide or deliver any other article of commerce, in consideration of advance made, ... ..

28. *LEASES*.—Any lease made in perpetuity, or for a term of years or period determinable with one or more lives, or otherwise contingent, in consideration of a sum of money paid in the way of premium, fine, or the like, if without rent, ... ..

The same ad valorem duty as for conveyance for such sum

Shall be charged on the amount advanced at the rate of bonds

The same duty is for a conveyance of sale for a sum of the amount of such consideration.

29. Any *LEASE OF LANDS, HOUSES, or other REAL PROPERTY* at a monthly or yearly rent, without any payment of any sum of money by way of fine or premium.

						For a period not exceeding one year.	For a period ex- ceeding one year
Where the rent calculated for a whole year shall exceed twelve						Sa. Rs. As.	Sa. Rs. As.
rupees, but not exceed 24 rupees, ...						0 4	0 9
Exceeding 24 rupees, but not exceeding ...						50 rupees, 0 8	0 12
"	50	"	...	Ditto	...	100 " 0 12	1 0
"	100	"	...	Ditto	...	250 " 1 0	2 0
"	250	"	...	Ditto	...	500 " 2 0	4 0
"	500	"	...	Ditto	...	1,000 " 4 0	8 0
"	1,000	"	...	Ditto	...	2,000 " 8 0	12 0
"	2,000	"	...	Ditto	...	4,000 " 12 0	16 0
"	4,000	"	...	Ditto	...	6,000 " 16 0	20 0
"	6,000	"	...	Ditto	...	10,000 " 20 0	32 0
"	10,000	"	...	Ditto	...	50,000 " 32 0	64 0
Above 50,000 ...						64 0	80 0

30. Any *LEASE OF LANDS, HOUSES, or other REAL PROPERTY*, stipulating for a yearly rent, and granted in consideration of a fine or premium. ...

Shall be charged with a duty equal to both ad valorem duties above provided, viz. both as lease and conveyance.

31. The *COUNTERPART* of any *LEASE*, i. e. the *KUBOOLIYUT*, or the like, ...

Shall be executed on paper, vellum or parchment, bearing the same stamp as the original.

# EXEMPTIONS

*All leases, where the annual rent shall not exceed twelve rupees.*

*All leases, or pottahs given by authority of Government, or of the Board of Revenue, with their counterparts, and all security bonds, executed as part of the same transactions, also all leases, viz. pottahs and kubooliyuts, executed and exchanged with ryots, and other actual cultivators of the soil.*

*Note.—Leases, pottahs, kubooliyuts, or other instruments of contract between zemindars, talookdars or other holders or proprietors of land, whether subject to the payment of revenue to Government or otherwise, or between farmers, kutkenadars, ijaradars or other tenants on one hand, and any other talookdar, kutkengdar, ijaradar or other leaseholder intermediates between the ryots or actual cultivators and the sudder malgozar or lakhirajdar on the other, ...*

Shall be written on stamped paper of the value above prescribed for leases.

494. In reply to your letter of the 12th instant I am directed by the Court of Sudder dewanny adawlat to inform you, that all leases and counterparts (*pottahs* and *kubooliyuts*) granted to or taken from the actual cultivators of the soil should, under the exemptions noticed in Article 31 of Schedule A, Regulation 10 of 1829, be written on unstamped paper whether Government be or be not a party in the transaction.—*Con. 635, 20th May 1831.*

All pottahs and kubooliyuts are to be written on unstamped paper.

<i>LETTERS or POWERS OF ATTORNEY, MOOKTARNAMAHS,</i> <i>&amp;c. viz.,</i>		Sa. Rs.	As.
No. 32.	<i>POWERS</i> to perform any one special, that is to say, particular act or the acts connected with one particular suit, case, or transaction,	0	8
33	<i>GENERAL</i> , i. e. not restricted as above to one case, suit or transaction,	4	0

## EXEMPTIONS.

*Vakalatnamahs, mooktarnamahs, and other powers required to be filed for the conduct of suits pending before the Native Courts of judicature or before the revenue authorities, for the rule regarding which see Schedule B, "Law Papers."*

	Sa. Rs.	As.
34 <i>LETTERS OF LICENSE</i> , from <i>CREDITORS</i> to <i>DEBTORS</i> ... ..	8	0
35 <i>MORTGAGES</i> , any deed of <i>MORTGAGE</i> or <i>CONDITIONAL SALE</i> , <i>KUT-KUBALI</i> , <i>BAE-BIL-HUF</i> , <i>BHOG-BHUNDEK</i> , &c. with or without possession given, of or for any lands, estates, or property, real or personal, intended as a security for money due, or to be lent thereupon; also, any deed or contract accompanied with a deposit or title deeds to any property, where the same may be made as a security for payment of money due or lent at the time, ..	Shall be charged at the same manner and at the same rate, as if in lieu of such deed of mortgage or the like, a bond had been taken for the sum due or lent at the time.	
36 <i>DEEDS of MORTGAGE</i> , or the like, given as security for the transfer of Government securities, or for the payment of an annuity for a fixed period, or for the delivery at a future date of any matter or thing capable of being valued, .. ..	Shall be charged at the above rate for the real amount secured, or for the bench value.	
37 <i>DEEDS of MORTGAGE</i> given for the security of annuities for an indefinite period, such as life annuities and the like, .. ..	Shall be charged at the rate of ten times the annual payment.	
38 Where the total amount secured by such mortgage is unlimited, ..	The deed may be extended on such stamp as the party may choose, but no further sum can be recovered thereon, than may be covered by the stamp.	
39 Where it may be stipulated that the amount secured by such mortgage shall not exceed a certain sum, .. ..	At the rate of such limitation.	

*Note*—When a bond may have been already taken for the amount secured, or when, from any other cause, the mortgage shall act merely as a collateral security to some other transaction already charged with the ad valorem duty thereupon, the same being specified in the body of the deed of mortgage, .. ..

The deed to be charged as a collateral deed. See note after conveyances.

Likewise, in case of there being more deeds than one required to execute the mortgage in the manner desired by the parties, the principal deed only shall be charged with the ad valorem duty, and all other deeds connected with the same transaction, .. ..

Shall be charged as prescribed in the rule for collateral deeds under head conveyance.

495. The same principle is applicable to mortgage bonds, and all deeds of mortgage for the security of money lent, not amounting to an absolute sale, viz. the principal sum advanced, and specified in the bond, or other deed, without any contingent interest, may be assumed as the value of the mortgaged property, for the purpose of determining the stamped paper to be used for the mortgage bond, or other deed of mortgage.—*Cir. Ord. 20th April 1818, par. 2.*

The value of the mortgaged property to determine the stamp, next the principal sum advanced, without interest.

No. 40. **MORTGAGES, ASSIGNMENTS, ACKNOWLEDGMENTS,**

or promissory notes granted to the treasurer, or other officer of the Bank of Bengal on account of the bank, or to any private banker or agent for loans or advances made on the deposit of Government securities, bullion, plate, jewels, or other goods, ... ..

To be charged as promissory notes

41. **PARTITIONS**, by private agreement of heirs and co-sharers, or made by public officers of estates, or property, real or personal, or in the nature of separation of brotherhood, as amongst Hindoos, when a sharer's portion exceeds in value rupees eight hundred, then on every such sharer's copy of the deed of partition, ... ..

3 0

When the sharer's portion shall not exceed 800 rupees,

Then if not exceeding 100 rupees, ... ..

0 8

Exceeding 100 rupees and not exceeding 200 rupees, ... ..

1 0

„ 200 Ditto 100 ... ..

2 0

„ 100 Ditto 500 ... ..

1 0

„ 500 Ditto 800 ... ..

6 0

And if any sum or sums of money shall be paid or agreed to be paid for equality of partition, ... ..

The principal deed supporting for such payment shall be charged to said sum with the ad valorem duty, prescribed for a conveyance or sale for an equal sum

42. **POLICY OF ASSURANCE, or INSURANCE**, or other instrument, by whatever name the same shall be called, whereby an insurance shall be made upon any life or lives, or upon an event depending upon any life or lives.

Where the sum insured shall not exceed Sa Rs. 5,000 ... .. 1 0

Exceeding 5,000 not exceeding „ 10,000 ... .. 8 0

„ 10,000 Ditto ... .. 20,000 ... .. 12 0

„ 20,000 Ditto ... .. 50,000 ... .. 16 0

Above „ 50,000 ... .. 20 0

496. An instance has been brought to the notice of the Court of unstamped policies of insurance being received as legal evidence. Although the Court have no reason to believe that such an irregularity prevails to any extent, they consider it proper to direct your attention to the entries Nos. 42 and 43, in Schedule A, Regulation 10 of 1829, with a view to prevent any instruments of the kind being admitted as evidence except when they bear the prescribed stamp.—*Cir. Ord. 29th Sept. 1837.*

Unstamped policies of insurance are not to be received as legal evidence



No. 43. <i>POLICY OF INSURANCE</i> of any ship, vessel, sloop, lighter, boat, or the like, or of any goods or property on board, or upon the freight of any ship, vessel, sloop, lighter, boat, or the like, or upon any other interest relating thereto, or upon any voyage where the premium shall not exceed two per cent. on the sum insured, if the whole sum insured shall not exceed one thousand rupees, . . . . .	Sa. Rs.	As.
	0	8
If the sum insured exceed one thousand rupees, then for every one thousand rupees, and also for any fractional part of one thousand rupees whereof the same shall consist, . . . . .	0	8
Where the premium shall exceed two per cent. on the sum insured, if the whole sum shall not exceed one thousand rupees, . . . . .	1	0
If the sum insured exceeds one thousand rupees, then for every one thousand rupees and also for any fractional part of one thousand rupees whereof the same shall consist, . . . . .	1	0

*PROMISSORY NOTES*—See Bills of Exchange.

*PROMISSORY NOTES*, payable at a period exceeding one year after date—See Bonds.

44. *PROMISSORY NOTES*, for the payment of any sum by instalments, i. e. *KISTBUNDEES*, or for the payment of several sums at different dates so that the whole of the money to be paid shall be definite and certain. . . . .

The same duty as would be chargeable on a bond for the whole amount.

All receipts for money deposited in any bank, or in the hands of any banker or agent, if the same shall stipulate for the payment of interest upon the money so deposited, or in hand shall be deemed and taken to be promissory notes.

45. <i>RECEIPTS</i> or <i>DISCHARGES</i> given for any, or upon the payment of any sum of money, exceeding 50 rupees, not exceeding 100 rupees, . . . . .	0	2
„ 100 „ Ditto 200 „ . . . . .	0	4
„ 200 „ Ditto 500 „ . . . . .	0	8
„ 500 „ Ditto 1,000 „ . . . . .	0	12
„ 1,000 „ Ditto 2,000 „ . . . . .	1	0
„ 2,000 „ Ditto 3,000 „ . . . . .	1	8
„ 3,000 „ Ditto 5,000 „ . . . . .	2	0
„ 5,000 „ Ditto 8,000 „ . . . . .	2	8
„ Above 8,000 „ . . . . .	4	0
Also for a receipt in full of all demands, . . . . .	4	0

And any instrument, note, memorandum or writing, given upon the payment of money, whereby any money, debt or demand, or the part thereof therein specified, shall be expressed or acknowledged to have been paid, settled, or otherwise satisfied, shall be deemed to be a receipt for the amount so declared to be paid or satisfied. The duty is to be paid by the party giving the receipt, and if a stamped receipt be refused, the party making the payment may provide the stamp, deducting the value thereof from the sum due.

And if any such instrument or other writing shall contain a general acknowledgment of the settlement of debts, accounts or other demands, without specifying the amount thereof, such instrument or writing shall be deemed and taken to be a receipt in full of all demands, and charged accordingly.

And if payment be made by delivery of a bill or bills of exchange, draft or drafts, promissory note, or the like securities of money, the receipt or acknowledgment given thereupon, shall be deemed to be a receipt within the meaning of this schedule.

## EXEMPTIONS.

*Receipts for money paid or received by any officer of Government on account of Government, not in the commercial department*

*Receipts or discharges for the rent of land granted by any zemindar, talookdar, farmer or other mahazdar, or by any holder or proprietor of land held exempt from the payment of revenue, or by any mofussal talookdar, yaradar, kutkenadar, or other leaseholder, or by the gomastah, factor, or other agent of such zemindar, or other person aforesaid, to a ryot or other actual cultivator for the rent of land tilled by him.*

*Note.* Receipts or discharges granted by any zemindar, talookdar or other holder or proprietor of land, or by any farmer, kutkenadar, yaradar or other tenant to any other talookdar, kutkenadar, yaradar, or other leaseholder intermediate between the ryots or actual cultivators, and the sudder malgoonwar or lakhirajdar, shall be written on stamped paper of the kind and rates above prescribed.

## EXEMPTIONS CONTINUED.

*Receipts and discharges given for the purchase money of any Government securities or shares of the Bank of Bengal*

*Receipts and discharges given for money deposited in any bank, or with any agent, to be accounted for on demand, provided no interest be stipulated as payable thereon.*

(If interest be stipulated, such receipt shall be chargeable as a promissory note, as above provided.)

*Receipts or discharges written upon promissory notes, bills of exchange, drafts or orders for the payment of money duly stamped.*

*Receipts and discharges given to gomastahs and others, being servants of the party giving the receipts, in acknowledgment of the performance of service, or of the said servants having rendered account of trusts and monies committed to them.*

*Letters by the post acknowledging the arrival of any promissory notes, bills of exchange, or other securities for money.*

*Receipts or discharges written upon or contained in any mortgage deed or other security, or any deed of conveyance, settlement, or other instrument duly stamped, acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal money, interest, or annuity thereby secured.*

197. The Court having reason to believe that receipts for sums of money not exceeding fifty rupees, paid from the treasuries of the Civil courts, are still occasionally taken on stamped paper, in accordance with the rule contained in Section 11, Regulation 1, 1814; direct me to

All receipts for money under 50 rs. paid by the civil courts, if that be the

full amount in deposit, and not a fractional part, must be given on plain paper.

observe that such receipts should, under Article 45, Schedule A, Regulation 10, 1829, be exempted from stamp duty; provided the sum paid on the receipt be the full amount in deposit, and not a fractional part only of a sum, subdivided with a view to evade payment of the stamp duty.—*Cir. Ord. 5th Aug. 1836.*

Dukhnamahs need not be on stamped paper.

498. Dukhnamahs taken from parties put in possession of houses, lands, &c. under a decree of court, need not be written on stamped paper.—*Con. 870, West. C. 21st Feb., Cal. C. 27th March 1834.*

Acknowledgments of partial payments not to be on stamped paper

499. Acknowledgments of partial payments of instalments are not required each to be written on stamped paper. [Receipts above fifty rupees are required by Schedule A, Regulation 10, 1829, to be written on stamped paper.]—*Con. 341, 1st June 1821.*

A receipt of the purchase money for a house, or other real property, must be written on a separate acknowledgment of the prescribed stamp

500. In the transfer by sale of a house or other real property, an acknowledgment by the seller of the receipt of the purchase money, written on the back of the original deed, is not sufficient. A separate acknowledgment (*khusool usool*) should be executed on the prescribed stamp, before it can be received in evidence in the course of a suit on the subject of such transfer.—*Ibid.*

#### No. 46. SETTLEMENTS, MARRIAGE SETTLEMENTS, &c. viz.

Any deed or instrument, whereby any sum or sums of money or any Government securities, or other property, real or personal, shall be settled or agreed to be settled upon, or for the benefit of any person or persons in any manner whatsoever, ... ..

Shall be charged with the ad valorem duty chargeable for a bond for the amount of value settled, or agreed to be settled, or in cases in which the value shall be indeterminate at the rate chosen by the parties under the rule and condition prescribed for bonds and agreements

*DEEDS of GIFT and DOWER*, whether to take effect on the instant or at a future period, determinate or indeterminate, ... ..

Shall be charged with the ad valorem duty chargeable for deeds of settlement

Deeds of *khusool usool* must be charged with a stamp as "agreements"

501. I am directed to inform you that deeds of *khusool usool* should, as directed in Article 46 of Schedule A, Regulation 10, 1829, be charged as "agreements" (Article 3, Schedule A) with such stamp as the parties may determine.—*Con. 836, West. C. 11th Oct., Cal. C. 8th Nov. 1833.*

#### EXEMPTIONS

*Wills, testaments, and the like, together with deeds merely declaratory of trust, pursuant to any previous settlement, deed or will.*

#### GENERAL EXEMPTION AND NOTE.

*Deeds, instruments and writings of any kind, in which Government, or any board, commission, court, or public officer of Government may, in a public capacity be a party, shall not be chargeable with any stamp duty, save and except deeds, instruments, and writings relating to matters of, or belonging to the commercial department, or on account of any commercial concern of, or belonging to the Honourable Company, which shall be written on stamped paper of the same value as is or may be prescribed for the like deeds or instruments in case of private individuals.*

*Note.*—The foregoing exemption shall not extend to deeds, instruments and writings executed to or by the Court of Wards, local agents or officers acting under their authority, such transactions being liable to a stamp duty like the transactions of individuals.

## GENERAL RULE.

If any deed, instrument, or document specified in this schedule shall not be contained in one sheet or piece of paper or other material, it shall suffice that one sheet shall bear the stamp, provided that the signature or seals of the parties and witnesses be thereupon.

## SECTION XXVIII.

*Stamps on Law Papers.*

502 In addition to the duties chargeable on deeds, instruments, and writings specified in Schedule A, there shall further be levied, raised and paid, as heretofore, in the province subject to the Presidency of Fort William, duties on law papers, viz. petitions of plaint, pleadings and the like at the rates and in the manner prescribed in Schedule B, which, with the rules and provisions therein included, shall be deemed and taken to be part of this Regulation, and no papers shall be filed, exhibited, received or admitted in any Court of judicature of the description stated in the schedule to require a stamp, unless the same shall be duly stamped. — *Reg. 10, 1829, Sect. 17*

Stamp duties on law papers.

*Schedule (B) referred to in Section 17 of the Regulation, containing the specification of duties chargeable on law papers*

503 1. *BAIL-BONDS, MUCHULKAS* *RECOGNIZANCES*, *SECURITY BONDS* (chazir or tal ganna) whether of specified amount, or with a penalty of a specific sum of money, or of indefinite amount, when furnished and filed under special order of a Court of justice, civil or criminal, or of any officer exercising judicial powers.

To be charged as petitions to the court or authority ordering the same

When executed between individuals not by order of court. ... .. { To be charged as bonds. See Schedule A.

## EXAMPLES

*Muchulkas taken on the release of prisoners from the Fowdar or criminal jail.*

504. It has been brought to the notice of the Court that a practice obtains in some districts, of admitting as legal evidence security bonds written on the same sheet of paper with the principal deed, where the stamp used was only of the value required for the latter instrument. As this practice is clearly erroneous, and deeds of the kind alluded to are wholly inadmissible as evidence against sureties, the Court deem it proper to call your attention to the rule, and to request that you will make it known to the lower courts — *Cir. Ord. Cal. C. 27th Oct. West C. 1st Dec. 1837.*

Security bonds must not be written on the same sheet with the principal deed, and of the stamp required for it.

505. Held, that the object of the Circular order of the 27th October, 1837, regarding security bonds written on the same sheet of paper with the principal deed, and bearing the stamp required for the latter instrument, was to explain the law on the subject for the protection of

But such security bonds are not inadmissible, if the proper steps be taken to legalize them

the interests of the Government, and not to declare deeds drawn up under those circumstances inadmissible, provided the proper measures were taken to have them legalized. Parties holding such documents are at liberty to apply to the revenue authorities, under Section 14, Regulation 10, 1829, to have a stamp affixed to the deeds so as to make them legal evidence in courts of law. — *Con. 1147, 27th April 1838*

Muchulkas and recognizances from prosecutors and witnesses may be taken on plain paper.

506. The Court are of opinion that under the terms of exemption contained in Schedule B. viz. "Muchulkas and recognizances taken from prosecutors and witnesses to secure attendance at criminal trials," the muchulkas in question may be taken upon plain paper. — *Con. 679, West. C. 7th March, Cal. C. 18th May 1832.*

Security bonds from police officers should be on plain paper.

507. I am directed by the Court of Nizamat adawlut for the Western Provinces to acknowledge the receipt of your letter of the 2d instant, with its enclosures on the subject of security bonds taken by Police officers under the Regulations. — In reply, I am directed to inform you that the Court are of opinion, that such documents should be drawn out on unstamped paper. — *Con. 710, West. C. 10th Aug., Cal. C. 14th Sept. 1832*

No. 2. *COPIES*—of *DECREES* in all regular suits for an amount exceeding one hundred and fifty rupees, calculated in the manner explained under the head "Plant."

When passed in the court of the Registers, or Zillah and city Judges, or by Sudder Ameen empowered to decide the same, ... ..	1	0
In the Provincial courts of appeal ... ..	2	0
In the Sudder dewanry adawlut ... ..	4	0

Reg. 3 1817  
rescinded

508. Section 2, Regulation 3, 1817 is hereby rescinded, and the exemptions contained in the foregoing clause shall be held applicable to my original suits or appeals of whatever amount which may be instituted in the Zillah or City courts, subsequently to the date fixed for the operation of this Regulation, whether those suits be tried by the Zillah or city Judge, or be referred by them for trial to the Sudder Ameen or Registers. — *Reg. 5, 1831, Sect. 9 (7, 3)*

No suits, however small the amount, instituted in the Zillah courts are exempt from the stamp duty.

509. The Court having reason to believe that a practice prevails in several of the Courts of civil judicature in the Lower Provinces, of giving copies of decrees and other documents connected with suits involving an amount not exceeding 150 rupees on unstamped paper, under the supposition that they still come within the exemptions specified in articles 2, 4, 5 and 9 Schedule B, Regulation 10, 1829 [which exemptions have been omitted, as having been superseded.] the modifications of those rules contained in Clause 3, Section 9, Regulation 5, 1831, notwithstanding, I am directed to call your attention to the last-mentioned enactment, and to communicate to you the opinion of the Court that under its provisions no suits, however small the amount, which are instituted in the Zillah courts, shall be held exempt from the stamp duty, whether eventually referred to the subordinate authorities, or retained on the Judge's file. — *Co-Ord. Cal. and West. C. 24th Jan. 1834.*

\* The provisions of Clause 4, Section 25, Clause 3, Section 29, Clause 1, Section 38, Regulation 24, 1816, are extended to all suits, not exceeding in value 64 rupees, instituted in Zillah and City courts whether tried there or by Sudder Ameen. — *Reg. 5, 1831, Sect. 2.*

- No. 3. **COPIES**—of **REVENUE** and **JUDICIAL PROCEEDINGS**, of **ACCOUNTS, STATEMENTS, REPORTS**, or the like, filed on record and taken out for use or reference, or when left on proceedings in place of originals withdrawn, per sheet, ... ..

Sa. Rs. As.  
0 8

And each sheet shall be of a size not exceeding that fixed for copy paper, (No. 3 of the Stamp office,) and shall be written on one side thereof only.

510. The Court are of opinion that from the rules laid down in Schedule B, Regulation 10, 1829, it appears to have been the intention of Government that both the application for the copy (of proceeding or order,) and the copy itself should be on stamped paper: the stamped paper assigned for the application being of a different value from that on which the copy is to be written. Sections 3 and 7 of the schedule seem to point out this construction as that which was intended by the Government, and this view of the subject is confirmed by Section 5 of the same schedule, which requires that even exhibits shall be accompanied by a petition when filed on the proceedings of a regular suit: it is also declared in Section 3, that the copy shall be written on one side thereof only—*Con. 773, West. C. 29th March, Cal. C. 26th April 1833*

Applications for copies are to be made on stamped paper, and the copy is to be written on one side only of the paper.

511. I am directed by the Court to acknowledge the receipt of a letter from Mr. W. Dent, late Judge of the District of Behar, dated the 30th April 1833, and to inform you, in reply to the question therein proposed that Government have been apprised of a reference made to them, to determine that copies of deeds and other Exhibits or papers not being proceedings, accounts, statements, or the like, provided for by Article 3, Schedule B Regulation 10, 1829, should when made for record on the Court be on a material related to the parties be written on plain paper—*Cal. Ord. Cal. and West. C. 29th Jan. 1834*

Copies of deeds and other Exhibits or papers not being those indicated above No. 3, when made for record, must be on plain paper

512. Held on a reference to the Court that the Court may require extracts of merchants' accounts and books to be made on stamped paper of the value of eight annas per sheet.—*Cal. C. 10th Dec. 1833, Cal. C. 10th Feb. 1834*

Copies or extracts from merchants' accounts and books, intended for record must be on stamps of the value of 8 annas per sheet

- No. 5. **EXHIBITS**.—when filed on proceedings in regular suits, shall be accompanied by a petition or application according to the number of a rule for that purpose.

In the courts of Registers and Sudder Adawlat.	0	8
In the courts of the zillah and city judges.	1	0
In the Provincial courts before Chief Judges or Revenue and or Munsifs in the Sudder dewanny adawlat.	2	0

6. **MOOKTARNAMAHs, FAKALATNAMAHs** and other **FOHARS**, required to be filed for the conduct of suits or regular summary, or of proceedings of any kind pending before the Native Courts of judicature, or before the revenue authorities, ... ..

To be charged as prescribed for petitions presented to those courts and authorities

#### EXEMPTIONS

*Mookturnamahs, executed by Native officers and soldiers, belonging to the Regular corps, on the Military establishment of the Presidency of Fort William*

7. **PETITIONS, DURKHASTS**, or **APPLICATIONS** addressed to any of the undermentioned authorities in relation to matters pending

before them in their official capacities, when not otherwise specified or provided for in the Schedule.

If to a Register or Sudder Ameen, or to a Collector of land revenue or of customs, or to an officer of the Salt and Opium department exercising judicial powers, or to a Magistrate, Joint Magistrate, or to a Zillah and City adawlut, per sheet, ... ..	Sa. Rs. A.
...	0 8
If to a Provincial court of appeal, or Commissioner of revenue and circuit, or other authority exercising powers superior to the Zillah adawlut, ...	1 0
If to the Sudder dewanny or Nizamut adawlut, or to the Sudder board of revenue, or to the Board of Customs, Salt and Opium, per sheet, ... ..	2 0

#### EXEMPTIONS.

*All charges, and informations respecting crimes and offences, not bailable under the Regulations.*

*Petitions from prisoners, embe dls. persons under examination or otherwise in duress, or under restraint of the court or its officers*

*Petitions of appeal presented to Magistrates against Chowkiedary assessment.*

*Communications made to Magistrates in regard to Police matters not intended for record.*

*Petitions to Collectors or officers making settlements, relating to matters connected with the assessment of lands, the ascertainment of rights or to other matters affecting the settlement of the Government revenue on lands, if presented pending the formation of such settlements*

*Petitions to boards or Commissioners of revenue relating to the same.*

Miscellaneous petitions before the moonsiffs need not be on stamped paper

513. On a reference from the Judge of zillah Chittagong, dated the 21st May, (last paragraph) the Court gave it as their opinion, on the 17th August, 1817, "that as the courts of the Registers, zillah and city Judges, Provincial courts, and the Sudder dewanny adawlut only are specified in these sections the provisions in them could not be considered applicable to the Native Commissioners."—*Con.* 183, 17th Aug. 1814.

Petitions claiming property in moonsiff's courts under reg. 5, 1831, see 6, cl. 4, must be on plain paper

514. The Court are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under clause 1, Section 6, Regulation 5, 1831 should be considered as an application "in relation to matters pending" before the court, and that, with reference to the omission of the Moonsiff's in Article 7, Schedule B, Regulation 10, 1829, and to the provisions of clause 2, Section 9, Regulation 5, 1831, such application in the courts of the Moonsiff's should not be written on stamped paper.—*Con.* 706, *Cal. C.* 20th July. *West. C.* 17th Aug. 1832

Applications for money deposited in court must be on stamped paper, unless when payment has been specifically ordered

515. Applications for the payment of money deposited in court must in every case be made on stamped paper, as a record, unless a specific order should, at the same time, have been passed for the payment of the amount.—*Con.* 1093, *Cal. and West. C.* 9th June 1837.

Application by a pauper appellant, to stay execution of a decree given against him pending appeal

516. A question having arisen in a case, now depending before the court, as to whether an application from a pauper appellant to stay the execution of the decree given against him pending the appeal, is admissible on plain paper, I am directed to request that you will submit

the point for the consideration of the Calcutta Court. The Court are of opinion, that as applications of the nature of that abovementioned, are not included amongst the exceptions, contained in Section 8, Regulation 28, 1814, which distinctly specifies the description of papers on which the stamp duties are to be remitted to paupers, they must be drawn out on stamped paper of the value prescribed for petitions presented to the courts in which they may be filed. The Court direct me to add that this principle has already been acted upon in regard to vakalatnamahs where the pauper may himself appoint a vakeel, as well as in respect to security bonds filed under Section 6, Regulation 28, 1814. and it appears to them equally applicable to petitions presented to the court for the purpose before stated. The Court propose accordingly to adopt it as a rule of future practice.—*Con. 1132, West. C. 16th Feb, Cal. C. 9th March 1838.*

must be written on stamped paper

517 Parties objecting to the transfer and sale of property in execution of decrees, may petition the Moonsiffs' courts on plain paper — *Con. 1278, West. C. 5th June, Cal. C. 26th June 1840.*

Parties objecting to the transfer or sale of property in execution of decrees may petition moonsiffs on plain paper

518. Petitions in summary suits are to be taxed as petitions under Article 7, Schedule B.—*Con. 583, 7th Jan. 1831.*

Petitions in summary suits to be taxed as petitions under art 7, as above

519. The Court are of opinion, that the exemptions referred to should be construed to allow prisoners confined under civil process to petition on plain paper only in matters relating to their treatment in jail, and persons confined under criminal process, in matters relating to their treatment in jail, and the case in which they are confined — *Cr. Ord. 28th May 1830.*

Prisoners confined in jail on civil process may petition on plain paper only in matters connected with their treatment in jail.

520 A difference of practice being understood to exist in respect to the value of stamp on which petitions under Article 7, Schedule B. Regulation 10 of 1829, are required to be written in the Zillah and City courts, the Court intimate, in consultation with the Sudder dewanny adawlut at Allahabad, that such petitions whether concerning matters before the Zillah and City courts, *as such*, or as possessing the jurisdiction once held by the Provincial courts, should be engrossed on an eight anna, and not a rupee stamp — *Cr. Ord. 27th April 1832.*

All petitions to the zillah and city courts must be written on an 8 anna stamp

521 I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of your letter of the 11th instant, enquiring on what stamped paper security bonds for costs of suits, &c entered into by order of a Civil court should be written, under the provisions of Regulation 10 of 1829; and to inform you in reply, that such bonds should be written on the stamp prescribed in No 7, Schedule B, Regulation 10, 1829, for petitions presented to the Courts requiring the security.—*Con. 555, 28th May 1830.*

Security bonds for costs of suit, &c entered into by order of a civil court should be written on the stamp prescribed for petitions presented to the court requiring the security

522. The Court observe that the Regulations make no exception in favour of such petitions [that is, petitions of complaint preferred under Regulation 2, 1814, against the officers of Government in their official capacity,] and they are, therefore, of opinion that it was intended they should be written, when first presented, on stamped paper of the value in like manner with all other plaints.—*Con. 1116, Cal. and West. C. 8th Dec. 1837.*

Petitions of complaint under reg 2, 1814, must be written on stamped paper of the same value as other plaints.

No. 8. **PLAINT—PETITION** of in **SUITS** and **APPEALS INSTI-  
TUTED** in any **NATIVE COURT**—For the recovery of any sum of  
money, or to obtain possession of any interest, matter or thing.



If the amount or value of the property claimed, shall not exceed 16 rupees,						Rs.	As.
Above	16 Rs.	but not exceeding	...	32	"	2	0
"	32	"	...	Ditto,	...	4	0
"	64	"	...	Ditto,	...	8	0
"	150	"	...	Ditto,	...	16	0
"	300	"	...	Ditto,	...	32	0
"	800	"	...	Ditto,	...	50	0
"	1,000	"	...	Ditto,	...	100	0
"	3,000	"	...	Ditto,	...	150	0
"	5,000	"	...	Ditto,	...	250	0
"	10,000	"	...	Ditto,	...	350	0
"	15,000	"	...	Ditto,	...	500	0
"	25,000	"	...	Ditto,	...	700	0
"	50,000	"	...	Ditto,	...	1,000	0
"	1,00,000	"	...	...	...	2,000	0

When a petition of plaintiff cannot be comprised in one sheet, the officers need not stamp the paper.

523. When the whole matter of a petition of plaintiff or appeal cannot be comprised in a single sheet of stamped paper, the additional sheets need not be stamped paper—*Con.* 860. *West. C.* 21st Feb., *Cal. C.* 27th March 1834

No 9 PLEADINGS—JUDICIAL—Every ANSWER, REPLICATION, REJOINDER, and SUPPLEMENTARY PLEADING, filed in any suit, shall be written as follows.

In the courts of the Register or Sudder Ameer, on paper of value, . . .	..	0	8
In the Zillah and City court. . .	..	1	0
In the Provincial courts of appeal, and in the Sudder dewanny adawlat, . . .	..	4	0

*Note.*—The pleadings in the Sudder and Mofussil special commissions, and other extraordinary courts, shall be regulated by the rules of practice established, or that may be established by those courts respectively.

Pleadings in the zillah and city court under reg. 5, 1831, to be written on paper of the value of 1 rs.

524. So much of the rule contained in Schedule B, Regulation 10, 1829, as prescribes that the pleadings in the courts of the zillah or city Judges shall be written on paper of one rupee value is hereby modified, and the pleadings in the courts of those officers shall be written on paper of the value of four rupees, wherever it has been or may be resolved to introduce the provisions of Regulation 5, 1831, except in original suits for property not exceeding one thousand rupees in value or amount, and in cases of appeal from the decisions of Sudder Ameer and Moonsiffs. In such cases, the pleadings shall continue to be written on stamped paper of only one rupee value.—*Reg.* 7, 1832, *Sect.* 3.

The *urjoonah*—appeal, if not stated in the petition of appeal, should be filed as a separate pleading on the stamp prescribed by art. 9, as above

525. The fifth clause of Section 8, Regulation 26, 1814, which has not been rescinded by Regulation 10, 1829, or any other enactment, provides that the specific objections of a judgment appealed from, if not stated in the petition of appeal, shall be filed as a separate pleading. The value of the stamp to be used for such pleadings is laid down in Article 9, Schedule B, Regulation 10, 1829—*Con.* 556, 28th May 1830.

526. I am directed to inform you that the exemption from stamp duty under Regulation 3, 1817, included all cases, in whatever courts tried, below 64 rupees. This was extended by Section 9, Schedule B, Regulation 10, 1829, to cases not exceeding 150 rupees; by Section 9, Regulation 5, 1831, cases tried before Moonsiffs to whatever amount are exempt from stamp. There is no subsequent enactment affecting this last rule. Clause 3, Section 9, Regulation 5, 1831, however, enacts that no suits, however small the amount, which are instituted in the Zillah court, shall be held exempt, whether eventually referred to the subordinate authorities or retained on the Judge's file. Section 3, Regulation 7, 1832, prescribes the amount of stamp in cases instituted in Zillah courts, viz. four rupees in cases above 1,000 rupees, and one rupee in original cases not above 1,000 rupees, as well as in appeals from Sudder Ameens and Moonsiffs.—*Con. 767, West. C. 8th, Cal. C. 29th March 1833*

Pleadings in all suits before moonsiffs are exempt from stamp. No suit instituted before a judge is thus exempt. Pleadings in zillah and city courts above 1,000 rs. must be written on a 4 rs. stamp; in original suits under that amount, and in appeal from S ameen's and moonsiff's on a 1 rs. stamp

527. Pleadings in original suits exceeding 5,000 rupees, referred to the Principal Sudder Ameens are to be written on stamped paper of one rupee value. Section 3, Regulation 7, 1832, being applicable only to the courts of the zillah and city Judges.—*Con. 1118, West. C. 15th Dec. 1837, Cal. C. 5th Jan. 1838.*

Pleadings in original suits above 5,000 rs. referred to the P S A must be on a stamp of 1 rs. value.

528. By Section 2, Regulation 10, 1829, all such Regulations then existing as relate to the imposition, levying and collecting of stamp duties, are rescinded, and by Section 17 of the same enactment the rules laid down in Schedule A and B are to be observed in future. In Schedule B, no exemption is to be found in favor of suits, either original or appeal, instituted in the established Courts of justice. The present is an appeal, preferred under Section 27, Regulation 2, 1819, to set aside a decision of the revenue authorities, and it follows therefore that the pleadings and other papers are liable, as in all other cases, to the full amount of stamp duty laid down in Article 8, Schedule B, Regulation 10, 1829, subject to the modifications of subsequent enactments.—*Con. 768, West. C. 15th, Cal. C. 29th March 1833.*

In appeals from the decisions of collectors under reg. 2, 1819, the pleadings and other papers are liable to the same stamp duty as in other appeals.

529. I am directed to inform you that the Court are of opinion that appeals to the Judge from the decisions of Registers and Principal Sudder Ameens not being among the exceptions contained in Section 3, Regulation 7, 1832, the pleadings in all such cases should be written on stamped paper of the value of four rupees.—*Con. 834, Cal. C. 4th Oct., West. C. 8th Nov. 1833.*

Pleadings in appeal from the P S A must be on a 4 rs. stamp.

#### No. 10. RAZEENAMAHs, RUFUANAMAHs, SOOLUNAMAHs, or

the like, that is to say—

Any written application, whereby or according whereunto, a suit pending in a Civil court shall be adjusted, or be capable of adjustment without argument in court, an award of the presiding Judge, or other officer,

Shall bear the stamp required for a pleading in the court wherein it may be filed.

If the suit be dismissed on such application before the pleadings have been completed, and the case called up, the plaintiff shall be entitled to claim from the court a certificate, stating the amount of stamp duty paid on the plaint, with specification of the number and endorsement of the paper filed, on presenting which to the Collector of the district, the plaintiff shall be entitled to receive back the entire amount of the said stamp duty—provided always, there be no exception taken to the paper or endorsement thereon.

If the pleadings have been completed, and the case has been called up for decision; or is on the list of causes ready for hearing, the plaintiff shall receive a certificate as above for half of the amount of stamp duty paid on the plaint.

If the adjustment by razeenamah or soolunamah be such as to require decree to pass on which process of execution can be taken out, the plaintiff shall not be entitled to any refund of the stamp duty so paid.

Refund of the stamp duty can be sanctioned only when a razeenamah has been regularly filed

530. I have the honour to request that you will obtain for me the opinion of the Court of Sudder dewanny adawlut on the following point, viz. whether the provisions of Section 10, Regulation 13, 1810, relative to the refund of the institution fee in cases adjusted by razeenamah, are to be considered as applicable to cases of dusturdarree, in which a plaintiff voluntarily relinquishes the prosecution of his claim.—In reply I am directed by the Court to inform you, that the refund of the stamp duty in lieu of the institution fee can only be sanctioned in cases in which a razeenamah has been regularly filed.—*Con. 977, 29th Aug. 1835.*

Unless the matter in dispute be completely adjusted, so that no farther interference of the court is necessary, the stamp duty is not to be refunded

531. I am directed to take this opportunity of pointing out to you that the object of Article 10, Schedule B, Regulation 10 of 1829, in authorizing the courts in certain cases to refund to the plaintiff either the whole, or a portion of the stamp duty paid on the plaint, being to encourage, as much as possible, such a complete adjustment of the matter in dispute amongst the parties themselves out of court, as shall render it unnecessary for the court to exercise any further interference whatever in the case, and this object being obviously defeated where either party may apply to the court either to recover the costs of suit, or to do any other act of that nature, the plaintiff is not entitled in such cases, under the article in question, to the refund of any part of the stamp duty paid by him on the plaint. The Court see reason to believe that this distinction is not sufficiently attended to.—*Co. Ord. Cal. C. 20th July, West. C. 3d Aug. 1835, par. 5.*

No. 11. *WITNESSES—PETITIONS or APPLICATIONS* for the  
summoning or examination of witnesses, according to the number of }  
persons named, ... .. } To be charged as  
exhibits

And no witness shall be summoned or examined in a regular suit, unless his name is included in a petition or application in writing given in as above.

#### RULE.

Nothing herein contained shall be deemed or considered to alter or affect the rules in force in regard to paupers, nor to affect the remuneration to which Moonsiffs are, or may be entitled

#### *Constructions relative to Stamps for Exhibits and Lists of Witnesses.*

A single petition may be admitted for several exhibits or summons, if the value of the stamp be equal to the duty established for each exhibit filed, or witness summoned

532. A person wishing to file several exhibits, or to summon several witnesses, need not file a separate petition for each exhibit or summons. A single petition may be admitted for two or more exhibits or summons, provided the value of the stamp be sufficient to secure to Government the duty established for each exhibit filed or witness summoned.—*Con. 145, 19th March 1811.*

What has been considered a distinct exhibit would be admissible as such, whether composed of two or more sheets

533. What has usually been considered as a distinct exhibit would be admissible as such under Section 15, Regulation 1, 1814, whether composed of two or more sheets.—*Con. 146, 19th March 1811.*

Copies of decrees in regular suits, whether the appeal be regular or special, if filed with the petition

534. A doubt having been entertained, whether copies of decrees and other documents filed with petitions for a special appeal, under Section 2, Regulation 26, 1814, should be considered liable to the rule contained in Section 15, Regulation 1, 1814, as modified by Section 23,

Regulation 26, 1814, I am directed to communicate to you the opinion of the Sudder dewanny adawlut, that all copies of decrees and other documents filed with petitions of appeal in regular suits, (whether the appeal be special or not,) must be considered within the rule above cited; with an exception to vakalutnamahs, and other documents exempted from the stamp duty on exhibits by Section 21, Regulation 26, 1814. The Court at the same time are of opinion, that Section 15, Regulation 1, 1814, and its modification in Section 22, Regulation 26, 1814, are not applicable to copies of decrees, or other documents, which may not be filed for record.—*Con. 289, 16th March 1818.*

535. On a reference from the Judge of zillah Bundlekund. dated 13th May, (paragraph 2,) “whether parties may be allowed to bring their own witnesses without making any application to the court, or whether it is intended that an application on stamped paper shall be made for every witness, whether summoned by the court, or offered to be produced by the parties;” the Sudder dewanny adawlut, adverting to the original object, declared in the preamble to Regulation 6, 1797, for the fee on summonses to witnesses, established by the first clause of Section 5 of that Regulation, and the provisions of Sections 15 and 16, Regulation 1, 1814, appearing to have been substituted for that clause, gave it as their opinion, on the 17th August 1814, “that no witness could be examined in a regular suit without a *dukhaust*, as prescribed by Section 16 of Regulation 1, 1814.”—*Con. 182, 17th Aug. 1814.*

Witnesses brought by a party without a summons cannot be examined without the usual application on stamped paper

536. The stamp duty for exhibits and lists of witnesses is not leviable in suits before Moonsiffs.—*Con. 183, 17th Aug. 1814.*

No stamp for exhibits and lists of witnesses in cases before Moonsiffs

537. The stamp duty for exhibits and lists of witnesses is not leviable in summary suits.—*Con. 187, 7th Sept. 1814.*

Nor in summary suits.

538. I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of your letter of the 10th instant, and in reply to refer you to the first clause of Section 20, Regulation 26, 1814, whereby the provisions of Section 16, Regulation 1, 1814, regarding applications for summoning witnesses, is expressly restricted to original regular suits and to appeals, regular or special, and declared not applicable to summary suits.—*Con. 249, 15th May 1816.*

Idem.

539. All documents filed with petitions of appeal, except the vakalutnamah, the mooktar-namah under which the vakalutnamah may be executed, the security bond for costs, or for staying or enforcing execution, and the copy of the decree appealed, must be considered as exhibits, and accompanied by the usual petition on stamped paper. In applications for special appeal, the exhibit fee would not be required until, on the admission of the special appeal, the documents are filed with the record of the proceedings.—*Con. 961, West. C. 26th June, Cal. C. 7th Aug. 1835.*

documents filed in petitions of appeal, except the vakalutnamah, the mooktar-namah, the security bond and the copy of the decree must be accompanied with the usual petition on stamped paper. In special appeals the exhibit fee is not required till the documents are filed with the record

540. Fees on exhibits and lists of witnesses in suits instituted prior to the operation of Regulation 5, 1831, should be adjusted by the Regulations applicable to such matters previous to the enactment of that Regulation.—*Con. 764, West. C. 1st, Cal. C. 29th March 1833.*

How fees on exhibits and lists of witnesses in suits commenced before 1831, must be adjusted

541. It was resolved, with the concurrence of the Calcutta Court of Sudder dewanny adawlut, that documents filed with applications for a review of judgment under the provisions of Section 4, Regulation 26 of 1814, should be considered as exhibits, and made liable, as

Documents filed with applications for review of judgment are exhibits and liable to stamped duty

such, to the rule contained in Article 5, Schedule B, Regulation 10 of 1829, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the court in appeal, whether regular or special.—*Con.* 1058, *Cal. C.* 21st Oct., *West. C.* 18th Nov. 1836.

All lists of witnesses must be charged as exhibits

542. I am directed to observe that Section 3, Regulation 7, 1832, modifies Schedule B, Regulation 10, 1829, only so far as relates to the value of the stamp on which "pleadings" in suits in the Judge's court shall be written, and that all "ism-nuveesees" or the names of witnesses must as heretofore be charged as "exhibits," and written on stamped paper of the value of one rupee (see Articles 5 and 11, Schedule B)—*Con.* 1088, *Cal. C.* 21st April, *West. C.* 12th May 1837.

In cases still pending before the S. D. A. if the zillah judge is ordered to take evidence on any point, the list of witnesses must be on a 2 rs stamp, in cases sent back for re-trial, 1 rs. stamp

543. In cases still pending before the Court of Sudder dewanny adawlut, in which the court may direct the zillah Judge to take evidence on any particular point, the lists of witnesses filed before the Judge must be written on the same stamp as if they were filed in the Court of Sudder dewanny adawlut, *i. e.* two rupees. But in cases sent back to the zillah Judge for further investigation and re-trial, the lists must be written on a stamp of one rupee.—*Ibid.*

#### Miscellaneous Rule

Note regarding the size and description of paper to be used for petitions or other documents

544. It seems to the Vice President in Council, that the judicial officers, subject of course to the control of the Sudder dewanny adawlut, and the revenue officers, subject to that of the Revenue boards, will be competent to lay down as a rule of court, or of their respective kutcheries, the size and description of paper to be used for petitions, or for other documents and records of their offices, when there may be no provision on the subject in the Regulations for the department. These officers would of course consult the Superintendent of Stamps, and adapt their orders to his suggestions and to the means at his disposal of providing paper of the sizes required.—*Suggestion of the Superintendent of Stamps.*—On this subject I would recommend that the Sudder dewanny adawlut be requested to issue circular instructions to the different courts, desiring that the vakeels may be enjoined to use the smaller sized papers commonly known as Nos. 5 and 6, for such purposes; [that is, for trivial purposes, such as stating the name of a witness who is to be summoned, or in filing exhibits]—*Cir. Ord. West. C.* 10th Aug. 1832.

## CHAPTER III.

### TRIAL AND DECISION OF REGULAR SUITS.

#### SECTION I.

##### *Language to be used in the Courts.*

1. It is hereby enacted, that from the first day of December, 1837, it shall be lawful for the Governor General of India in Council, by an order in Council, to dispense either generally or within such local limits as may to him seem meet, with any provision of any Regulation of the Bengal code, which enjoins the use of the Persian language in any judicial proceeding or in any proceeding relating to the revenue, and to prescribe the language and character to be used in such proceedings.—*Act XXIX. 1837. Sect. 1.*

The G. G. in C. may dispense with any reg. which enjoins the use of the Persian language in judicial or revenue proceedings, and prescribe the language & character to be used.

2. And it is hereby enacted that from the said day it shall be lawful for the said Governor General of India in Council, by an order in Council, to delegate all or any of the powers given to him by this Act to any subordinate authority, under such restrictions as may to the said Governor General of India in Council seem meet.—*Ibid, Sect. 2.*

The G. G. in C. may delegate the powers given by this act, to any subordinate authority

3. The President of the Council of India in Council having been pleased, on the 4th ultimo, in conformity with Section 2, Act XXIX. of 1837, to delegate to the Deputy Governor of Bengal all the powers given to the Governor General in Council by that Act, the Deputy Governor has resolved that in the districts comprised in the Bengal division of the Presidency of Fort William, the vernacular language of those districts shall be substituted for the Persian in judicial proceedings and in proceedings relating to the revenue, and that the period of twelve months from the 1st instant shall be allowed for effecting the substitution. His Honour is sensible that this great and salutary reform must be introduced with caution, involving as it does the complete subversion of an old and deeply-rooted system. He therefore vests the various heads of departments with a discretionary power to introduce it into their several offices and those respectively subordinate to them, by such degrees as they may think judicious, only prescribing that it shall be completely carried into effect within the period above mentioned.—*Cir. Ord. 9th Feb. 1838.*

In the districts of the Bengal presidency, the vernacular language will be substituted for the Persian in 12 months.

4. It being desirable that the proceedings of the Civil and Criminal courts recorded in the vernacular, should be generally intelligible, by the adoption of a style equally removed from the colloquial and that employed by the pundits, I am directed to request that you will pay particular attention to the subject, and refer your head ministerial officers, and the uncovenanted Judges under your control, to the Bengalee version of the Regulations of 1793, in regard both to the style which should be made use of by them and the terms which usually occur in legal proceedings.—*Cir. Ord. 2d April 1841.*

The Bengalee version of the regulations of 1793 to be the standard both of style and of terms.

The proceedings of the assistant of the G. G.'s agent at Hazareebaugh will be written in Oordoo

5. I am directed to request that all proceedings addressed to the assistant to the Governor General's Agent stationed at Hazareebaugh or Lohardugga, may be written in the Oordoo language.—*Cir. Ord. 23d Nov. 1838.*

[*The three following Rules, Nos. 6, 7 and 8, apply only to the Western Provinces.*]

In the West, prov the Hindoostanee will be substituted for the Persian in all civil proceedings, but the papers may be accompanied with a Persian translation.

6. The court direct that, from the 1st of July next, the use of Persian in all civil proceedings, pleadings, petitions, and writings of whatsoever description, both in your own and the subordinate courts, be abandoned, and the Hindoostanee substituted in lieu of it—this rule not being, however, construed to prohibit parties, who may desire it, from presenting, nor the Judge from receiving, such Hindoostanee pleadings, petitions, and other writings, with the accompaniment of a Persian translation.—*Cir. Ord. 19th April 1839, par. 2*

The pleadings and proceedings must be recorded in clear intelligible Oordoo

7. It is the wish of Government that care should be taken, especially on first introducing the measure, that the pleadings and proceedings be recorded in clear intelligible Oordoo, (on Hindee where that dialect is current,) and that the Native ministerial officers, hitherto accustomed to write a somewhat impure Persian, do not merely substitute a Hindoostanee for a Persian verb at the end of a sentence, under the mistaken idea that such a practice will be considered as fulfilling every object in view in making the change.—*Ibid, par. 4*

A written Hindoostanee style and phraseology of a certain standard of correctness to be exacted from the vakeels' papers not written in a clear and legible character will be rejected.

8. In the same manner it behoves you to be equally cautious, and to impress the necessity of the like caution on the several Native judicial officers under you, with respect to exacting from the vakeels and pleaders, and generally all parties moving the court, first, a written Hindoostanee style and phraseology of a certain standard of correctness—such, for example, as a well-bred Native, not familiar with Persian, may adopt in common discourse, and secondly the strict use and observance of a clear and legible written character in all manuscript papers filed in the courts, under a declared penalty of their rejection if this rule be not adhered to, requiring, also, particular attention to the latter point from the officers of the courts. The Court are satisfied that the exercise of some care at first in the above particulars is calculated to prevent much future embarrassment, labor, and delay.—*Ibid, par. 6.*

Oordoo will be the language of record in all proceedings of the S. D. A. and S. N. A.

9. The Court resolve, with the sanction of His Honour the Deputy Governor, that the Oordoo language shall in future be the language of record in all proceedings and orders in the Sudder dewanny and Nizamat adawlat at the Presidency, and that the same shall be written in the Persian character.—*Cir. Ord. 5th July 1839, par. 1.*

In decrees of such court, &c. the points to be decided, the decision and reason thereof, injunctions for revision of decrees, and orders for review of judgment shall be written in English signed by the judges and afterwards translated into the vernacular language, &c.

10. Whereas, it is expedient that the decisions of Courts of justice, and the reasons for the decision should be written and signed by the Judge at the time of pronouncing his decision, and in the vernacular language of the Judge;—It is hereby enacted that in all the Presidencies so much of all decrees as consists of the points to be decided, the decision thereon and the reasons for the decision, and all injunctions for the revision of decrees in regular suits, and all orders for reviews of judgment, which shall be passed by Judges of the Sudder courts, or by Judges of Zillah and City courts, or by subordinate or assistant Judges of zillahs, shall be written originally in English, and signed by the Judge or Judge at the time of pronouncing such decision and orders: and shall be translated into the vernacular language, commonly used in the court wherein the suit to which the decree or order relates shall have been instituted; and the translation shall be incorporated in the decree.—*Act XII. 1843, Sect. 1*

11. And, whereas, it is expedient, that excepting as regards the language to be used, Principal Sudder Amceens, Sudder Amceens, and Moonsiffs should be guided by the same rules as are hereinbefore provided for the guidance of the superior Judges:—It is hereby enacted, that in all the Presidencies so much of all decrees as consists of the points to be decided, the decision thereon and the reason for the decision, which shall be passed by Principal Sudder Amceens, Sudder Amceens, or Moonsiffs, shall be written originally in the vernacular language of such Principal Sudder Amceen, Sudder Amceen, or Moonsiff, and signed by such Principal Sudder Amceen, Sudder Amceen or Moonsiff, at the time of pronouncing such decision, and (in case such vernacular language shall not be the same as the vernacular language commonly used in the court wherein the suit to which the decree relates shall have been instituted,) shall be translated into such last mentioned vernacular language, and the translation shall be incorporated in the decree.—*Act XII. 1843, Sect. 3.*

Decrees, &c. of P. S. A. or M. shall be written in the vernacular language of such P. S. A., S. A. and M., and (as the case may be) translated into the vernacular language of the court.

12. A suit was remanded because the requirements of Act XII. of 1843 had not been fulfilled.—*S. D. A. Sel. Rep. 26th March 1845, vol. 7, p. 201.*

Suit remanded for neglect of the requirements of act 12, 1843.

13. It has been ascertained, that diversity of opinion prevails in regard to the requirements of Act XII. of 1843, and it has been deemed requisite in consultation with the Sudder dewanee adawlut for the North Western Provinces, to promulgate instructions on the subject for general observance with a view to secure uniformity of practice.—*Civ. Ord. 16th Aug. 1844, par. 1.*

Instructions of the S. D. A. regarding the provisions of act 12, 1843.

14. The Courts of Sudder dewanee adawlut have ruled, that the terms of the Act in question render it obligatory on Judges of all denominations to record their original decisions and the reasons thereof, in their own hand-writing, signing them agreeably to the provisions of the Act, "at the time of pronouncing such decisions," and causing them to be correctly "translated into the vernacular language commonly used in the court, wherein the suit to which the decree or order relates, shall have been instituted," this injunction, it will be understood, has reference to all the decisions and orders specified in Sections 1 and 3 of the Act respectively.—*Ibid, par. 2.*

The judges are bound by it to record their original decisions when pronouncing it, and the reasons, in their own hand-writing, and to cause a correct translation to be made in the vernacular tongue commonly used in the court.

15. Where the vernacular language, and that used in the subordinate Civil courts are identical, the translation may of course be dispensed with, but the decision and the reason thereof, drawn out, originally in the hand-writing of the Native Judge should be filed with the record of the suit to which it relates, and incorporated in the final decree.—*Ibid, par. 3.*

Where the vernacular language, and that of the lower court are the same, a translation is unnecessary; but the Judge must write the decision, and the reason, in his own hand-writing.

16. The civil Judges are desired to ascertain and report, after a suitable interval, that these instructions have been practically introduced, issuing such precautional injunctions on the subject, as they may deem fitting.—*Ibid, par. 4.*

The civil judges will report upon the introduction of these instructions.

17. The proceedings and papers in all civil cases transmitted to this court, which may be written either in the Persian, Oordoo, or Bengalee language, shall be unaccompanied by translations; but in criminal trials referred to the Nizamut adawlut, with exception to trials for the crime of thuggee, all papers which may not be drawn up in the Persian or Oordoo language, shall be accompanied by translations in the latter.—*Civ. Ord. 5th July 1839, par. 2.*

Papers sent to the S. D. A. in Persian, Oordoo or Bengalee need not be accompanied with a translation.

18. All papers in the Mug, Orissa, and other dialects, shall be accompanied by Oordoo translations.—*Ibid, par. 3.*

Papers in the Mug, Orissa, or other languages must be translated.



In districts where the Oordoo or Bengalee prevail petitions and pleadings may be presented in any language, but they must be accompanied with a translation in Persian, Oordoo or Bengalee. The same rule applies to tutwas and bewustahs.

The authorities in the Bengal districts will correspond with each other in Bengalee and with other courts in Oordoo.  
Rule in Cuttack

The above rule enforced.

Regarding the introduction of the Nagree character in districts in which the Oordoo language is current

Idem.

Idem

A European defendant filing his answer in the Persian or the

19. In the districts in which either the Oordoo or the Bengalee is the current language, parties are to be allowed, in all Civil and Criminal courts, to present all petitions and pleadings in any language they think most suitable to their purpose: but any documents so presented, which may not be written either in the Persian, Oordoo, or Bengalee, shall be accompanied by translations in one of these three languages. The same rule shall be applicable to tutwas and bewustahs required from the law officers.—*Ibid. par. 6.*

20. The authorities in the Bengal districts shall correspond with each other in the vernacular language, and employ the Oordoo in their correspondence with the courts of other districts. The same rule shall be observed, *mutatis mutandis*, in Cuttack and the other provinces subject to the jurisdiction of this court.—*Ibid. par. 7.*

21. It appearing that proceedings in Bengalee are occasionally sent to authorities of districts where Oordoo is the vernacular, I am directed by the Court to request that you will strictly conform to the seventh of the Rules circulated on the 5th July, 1839, which relates to correspondence with other districts.—*Cir. Ord. 24th June 1842.*

22. The authorities of the districts in which the Oordoo language is current, shall be required to take measures for introducing the use of the Nagree character in writing that language; and to report on the 1st January next, the progress which has been made in that respect.—*Cir. Ord. 5th July 1839, par. 5.*

23. The instructions contained in paragraph 5 of the Court's resolutions of the 5th July last, regarding the use of the Nagree character in writing the Oordoo language, being general, and it being material that that measure should be carried into effect without obstruction to public business, I am directed by the Court to request your particular attention to the necessity of introducing the change in the most gradual and careful manner. It will be proper for you the Court observe, before taking any decisive steps, to make enquiries on the subject, as to the mode in which the wishes of the Government to render all public proceedings intelligible to the people, may be fulfilled, consistently with the disposal of the business of your court with due regularity and expedition. It will be expedient also that you put yourself in communication with the other authorities of the district, both judicial and revenue, in order to the adoption of an uniform system in all the branches of the public service.—*Cir. Ord. 1st Nov. 1839*

24. In addition to the precautions which the Circular order alluded to, 1st November last has directed Judges, &c. to take, before requiring the exclusive use of the Nagree character in writing the Oordoo language in proceedings before their courts, it occurs to His Honour's Council, that it might be well to forbid the introduction of that measure by any judicial officer before obtaining the special sanction of Government. Judges who feel prepared to introduce this change may be required previously to report what they have done in the way of precaution laid down by this Circular order, what are the grounds on which they are assured that the measure will not materially interfere with regularity and expedition in the disposal of business, and what measures they have taken, in communication with the other district authorities, for "the adoption of an uniform system in all the branches of the public service."—*Cir. Ord. 13th Jan. 1840.*

25. The Calcutta Court held on a reference from the Agent to the Governor General in Hazareebaugh, that a European defendant filing his pleadings and petitions in the Persian

or vernacular language on the prescribed stamp may be permitted to add translations thereof in English on unstamped paper; and that all processes issued to him should be written in the ordinary language of the court and in English. They further held that it is no part of the duty of the court to furnish the defendant with translations, but that he should procure a person duly qualified to interpret for him.—*Con.* 1035, *Cal. C.* 12th Aug., *West. C.* 16th Sept. 1836.

vernacular language on stamped paper may file a translation in Eng. on plain paper.

## SECTION II.

*Zillah and City Courts—Division of a Claim.*

[The general rules which forbid the division of a claim, are laid down in Circular Order, 11th January, 1839, and will be found at page 71, Section 35; in addition to which the Sudder Court has more recently passed the following order.]

26. The Courts of Sudder dewanny adawlut have had occasionally to notice, notwithstanding the injunctions laid down in Circular order, No. 29, dated 11th January, 1839, that plaintiffs have instituted actions for a portion of their claim, intimating their intention to sue separately for the remainder at a future period; they have therefore felt that a necessity exists for an authoritative explanation of the Circular.—*Cir. Ord.* 30th Sept. 1847, par. 1.

Authoritative explanation of that circular.

27. The Circular sets out with declaring that it is illegal, for the reasons stated, to divide a claim of inheritance and in its sixth paragraph, it is ruled that interest or *wasalat* shall be presumed to have been relinquished, in the event of either not being claimed on the institution of a suit for the principal of a debt or for proprietary right.—*Ibid*, par. 2.

It is illegal to divide a claim of inheritance; interest or wasalat not claimed on the institution of the suit deemed to be relinquished.

28. The two points involved are, whether a suit should be heard which professes to be for only a portion of the thing claimed, and whether one should be heard, which is for that portion not included in the first plaint.—*Ibid*, par. 3.

Should a suit be heard professing to be for a part of the claim, or which is for the portion not included in the first plaint.

29. On these two points the Courts have directed the promulgation of the following rules, as supplemental to Circular order, No. 29, January 11, 1839, but with the intention of their only having prospective effect—*First*, If a plaintiff sues expressly for a portion of his claim, stating in his plaint that he will afterwards sue for the remainder, he is to be at once nonsuited. *Second*, If a claim is made without mention of any remaining claim, the suit is to be heard. *Third*, A suit brought for what ought to have been included in a previous suit, is to be dismissed.—*Ibid*, par. 4.

Orders by the S. D. A. on these points

30. The Provincial court having nonsuited the appellants for having sued for only a part of their claim, the Sudder dewanny adawlut allowed a summary appeal from this decision, and directed the Provincial court to re-admit the suit, and allow the appellants to pay the institution fee on the remainder of their claim, and to amend their plaint, according to Section 4, Regulation 4, 1793.—*S. D. A. Sel. Rep.* 9th April 1819, vol. 2, p. 293.

Parties nonsuited for suing for a part of their claim had then suit re-admitted and were allowed to pay the institution fee on the remainder, and amend their plaint.

31. A plaintiff being nonsuited on the ground that she sued for a part instead of the whole sum due to her from the defendant, and having subsequently instituted a new suit for the whole debt which was awarded to her, the defendant appealed to the Sudder dewanny adawlut, who reversed the nonsuit and ordered that the original suit should be re-tried on its merits; judgment being again given for the plaintiff, the Sudder dewanny adawlut awarded payment

A plaintiff nonsuited for having sued for part of the sum due, instituted a new suit for the whole, which was awarded. The dt. appealed to the S. D. A. who re-

versed the nonsuit and ordered the case to be re-tried on its merits, and the decree for the plaintiff was confirmed on appeal.

Suit for a portion of a claim remanded by a supplementary plaint, because the plaintiff was filed before the issue of the C. O. of 11th Jan 1839

of the whole debt, evidence to its being due having been furnished and there having been no irregularity in preferring the claim.—*S. D. A. Sel. Rep. 21st April 1824, vol. 3, p. 337.*

32. Suit for a portion of a claim, being opposed to the Circular order, dated 11th January, 1839, remanded, to admit a supplementary plaint, the petition of plaint having been filed before the issue of the Circular.—*Rep. Reg. Cases, 16th June 1847.*

### SECTION III

#### *Limitation of Time for the Cognizance of Suits.*

[Bengal, Behar, and Orissa]

Courts not to try the merits of any suit where the cause of action shall have arisen before 12th Aug. 1765

33. The Zillah and City courts are prohibited hearing, trying, or determining the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th of August, 1765.—*Reg. 3, 1793, Sect. 14.*

The limitation of time applicable to the districts of Midnapore, Burdwan, and Chittagong, which were ceded in 1760

34. The prohibition against the trial of suits, the cause of action in which may have arisen previous to August, 1765, is applicable to the districts of Burdwan, Chittagong, and Midnapore, ceded in September, 1760, in common with other parts of the provinces included in the *Dewanny* grant in 1765, no distinction being made in the Regulations.—*S. D. A. Sel. Rep. 30th Aug. 1815, vol. 2, p. 156.*

Courts not to try the merits of any suit for lands or grounds where the cause of action shall have arisen before 1st July, 1775

35. The City court, and the three Zillah courts, are prohibited hearing, trying, or determining the merits of any suit whatever, against any person or persons, to regain the possession of lands or grounds, if the cause of action shall have arisen previous to the 1st of July, 1775.—*Reg. 7, 1795, Sect. 8.*

[Provinces ceded by the Nawab Vizier]

Suits not cognizable where the cause of action has arisen 12 years prior to institution of suit

This rule to remain in force, for 12 years subsequent to the cession

36. The Courts of adawlut are prohibited from hearing, trying, or determining the merits of any civil suit whatever, if the cause of action shall have arisen at a period, being twelve years antecedent to the date on which the petition for the institution of such suit shall be presented to the court. This rule is to remain in force until the period of twelve years shall have elapsed, from the date of the cession of the provinces, ceded by the Nawab Vizier to the Honourable the English East India Company, viz the 10th day of November, 1801.—*Reg. 2, 1803, Sect. 18 Cl. 1.*

Claim to lands in Cawnpore not in possession of the claimants for 38 years before the cession of the province, not cognizable

37. Held, that a proprietary claim to lands situated in Cawnpore, is not cognizable, under Regulation 2, 1805, there not having been any possession on the part of the claimants or their ancestors for thirty-eight years before the Company's acquisition of the provinces; and no claim having been preferred on their part at either of the first three settlements.—*S. D. A. Sel. Rep. 25th Sept. 1826, vol. 4, p. 185.*

The term of 60 yrs. specified in reg. 2, 1805, sec. 3, cl. 3, not applicable to a suit for lands in Allahabad instituted 12 years after the cession

38. The term of sixty years specified in Clause 3, Section 3, Regulation 2, 1805, held not applicable to a suit for lands in Allahabad, instituted upwards of twelve years after the date of the cession; the cognizance of which is prohibited by Section 18, Regulation 2, 1803.—*S. D. A. Sel. Rep. 24th July 1827, vol. 4, p. 251.*

[Agra, Seharunpore, Allyghur, Bundelkund.]

39. In lieu of the date prescribed by Section 18, Regulation 2, 1803, the 30th of December, 1803, in the provinces constituting the zillah of Allyghur, the northern and southern divisions of the zillah of Seharunpore, and the zillah of Agra; and the 16th of December, 1803, in the territory constituting the zillah of Bundelkund; (being the dates on which the said provinces and territories were respectively ceded to the Honourable the English East India Company) shall be considered the periods of limitation for taking cognizance of suits, subject to the several provisions contained in Section 18, Regulation 2, 1803, and in Sections 2 and 3, Regulation 2, 1805.—*Reg. 8, 1805, Sect. 6, Cl. 2.*

\* What dates to be substituted in lieu of the date prescribed by sec. 18, reg. 2, 1803.

[Cutlack]

40. The Courts of adawlut are prohibited from hearing, trying, or determining the merits of any civil suit whatever in the zillah of Cutlack, including the abovementioned pergunnahs, if the cause of action shall have arisen at a period, being twelve years antecedent to the 14th day of October, 1803, the date on which the fort and town of Cutlack were surrendered to the British arms.—*Reg. 14, 1805, Sect. 5.*

Courts of adawlut prohibited from hearing, trying, or deciding civil suits wherein the cause of action shall have arisen 12 years antecedent to 14th October, 1803.

41. In a suit in the Zillah court of Cutlack for possession of an estate as the plaintiff's right by inheritance from a banker, [who died nineteen years before,] it appearing that the ancestor of the defendant though not the rightful heir, had obtained a public order from the late Government, constituting him proprietor of the estate, and that possession had been held accordingly for fourteen years prior to the introduction of the British authority into the district, the claim held by the Sudder dewanny adawlut not to be cognizable under Sections 5 and 6, Regulation 14, 1805, which restrict the courts from interfering with acts of the Native Government, or with suits in which the cause of action may have arisen more than twelve years before the acquisition of the district.—*S. D. A. Sel. Rep. 27th Feb 1811, vol. 1, p. 311.*

Claim for an estate in Cutlack, not cognizable under the circumstances of the case, in reference to the law of limitation.

42. The Superintendent is prohibited from taking cognizance of any suit, the cause of action in which shall have arisen antecedent to the 14th day of October, 1803, the date on which the fort and town of Cutlack were surrendered to the British arms.—*Reg. 11, 1816, Sect. 4.*

Suits not cognizable, if the cause of action arose before 14th October, 1803.

43. A case of succession to one of the tributary estates of zillah Cutlack, decision in favor of the plaintiff by the Superintendent reversed, and the claim dismissed, as being barred by Section 1, Regulation 11, 1816, which prohibits cognizance of suits in which the cause of action may have arisen prior to the cession of the district.—*S. D. A. Sel. Rep. 22d March 1825, vol. 4, p. 39.*

Claim of succession to one of the tributary estates in Cutlack, dismissed, being barred by reg. 11, 1816, sec. 4.

[Sook, Soosa and Sahar.]

44. Instead of the date specified in Section 11, Regulation 9, 1804, the 17th of April, 1805, being the date of the treaty concluded with the Rajah of Bhurtpore, shall be considered the period of limitation for taking cognizance of crimes and offences committed in the pergunnahs mentioned in Section 2.—*Reg. 12, 1805, Sect. 1.*

The 17th of April, 1805, to be considered the period of limitation for taking cognizance of offences committed in the said pergunnahs.

[Callinger.]

45. The Courts of civil judicature shall not be deemed competent to take cognizance of any civil suit, if the cause of action shall have arisen previously to the 19th of June.

Law of limitation in Callinger.

1800, being a period of twelve years antecedent to the cession, as above specified.—*Reg. 22, 1812, Sect. 4.*

[Deyra Dhoon]

Civil courts prohibited from taking cognizance of suits, if the cause of action shall have arisen previously to the 15th May, 1803

46. The Courts of civil judicature shall not be deemed competent to take cognizance of civil claims in the Deyra Dhoon, the cause of action in which may have originated previously to the 15th of May, 1803, being a period of twelve years antecedent to the date of the convention, by which that tract of country was surrendered to the British Government.—*Reg. 4, 1817, Sect. 3.*

[Khunde and Mahela]

Civil courts not competent to take cognizance of suits, if the cause of action shall have originated previously to the 1st November, 1805

47. The Courts of civil judicature shall not be deemed competent to take cognizance of civil claims in the elakeh and villages in question, the cause of action in which may have originated previously to the 1st of November, 1805, being a period of twelve years antecedent to the cession of the elakeh and villages in question.—*Reg. 2, 1818, Sect. 3, Cl. 2.*

[Goherdhun]

Civil courts prohibited from taking cognizance of suits, if the cause of action shall have arisen previously to the 24th January, 1811

48. The Courts of civil judicature shall not be deemed competent to take cognizance of civil claims in purgunnah Goherdhun, the cause of action in which may have originated previously to the 25th January, 1814, being a period of twelve years antecedent to the date on which that purgunnah was resumed.—*Reg. 5, 1826, Sect. 3.*

#### *General Rule of Limitation and the Decisions of the Sudder Court.*

Courts not to try the merits of any suit, if the cause of action shall have arisen before the 12th August, 1765

A suit where the cause of action shall have arisen twelve years before a suit shall have been commenced for it

Exception to

49. The Zillah and City courts are prohibited hearing, trying, or determining the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th of August, 1765, or any suit whatever against any person or persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it, unless the complainant can shew by clear and positive proof that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money; or that he directly preferred his claim within that period for the matters in dispute, to a court of competent jurisdiction to try the demand, and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress.—*Reg. 3, 1793, Sect. 14.*

#### *Decisions of the Sudder Court on the General Rule of Limitation.*

A case is decided by the prov. court in 1797, no action is instituted before 1815, the right of action is barred by the law of limitation

Claim to the possession of an estate barred by the law of limitation, the reasons urged for the delay being insufficient

When a plaintiff had pursued his claim within twelve years, he pursued his claim, though not before the proper tribunal, and his petition for redress was

50. A summary decision passed by a Zillah court in 1796, and confirmed by the Provincial court in 1797, left to the party out of possession the option of suing to establish his claim to certain lands held, that as no action had been instituted till 1815, the right of action was barred by the rule of limitation.—*S. D. A. Sel. Rep. 25th Jan. 1825, vol. 4, p. 14.*

51. Claim to possession of a talook barred by the rule of limitation, the reasons urged by the claimant for omitting to urge his claim at an earlier period being deemed insufficient.—*S. D. A. Sel. Rep. 12th March 1825, vol. 4, p. 29.*

52. Plaintiff held not to be prescribed, where it was shewn, that within twelve years

pending, when the term expired: this was ruled in case of an illegal sale, to recover revenue where plaintiff had petitioned the revenue authorities to set aside the sale, and his petition for relief was pending when the time expired—incompetency of those authorities to afford relief notwithstanding.—*S. D. A. Sel. Rep. 31st Jan. 1832, vol. 5, p. 168.*

though not before the proper tribunal, and his petition for redress was pending when the term expired, his claim was not barred by the law of limitation.

53. A petitioner's estate was sold in 1803. Objecting to the sale, but not obtaining redress from the revenue authorities, he presented a petition in 1807 to the Provincial court, by whom he was requested to apply to the Revenue Board. Ten years after 1807, he did apply to the board who on the 17th February, 1818, referred him to the Civil court. On the 6th December, 1829, [viz. after a lapse of eleven years and nearly ten months,] he instituted his suit in zillah Behar. The zillah Judge dismissed the suit as being barred by the rule of limitation; and the Sudder dewanny adawlut confirmed the dismissal. On application for review, the question arose whether the petitioner could be considered to have saved his right of action, by suing within twelve years from the date, on which he was referred by the Board of Revenue to the Civil court? Or must the period within which he is bound to institute the suit, be reckoned from the date of the order of the Provincial court, referring him to the board? The majority of the Calcutta Court, and the whole of the Western Court held, that the cognizance of the claim is barred under the general rule of limitation.—*S. D. A. Sel. Rep. 12th Aug. and 9th Sept. 1836, vol. 5, p. 175. [Also Con. 1036.]*

Plaintiff applies for redress in 1807 to the prov. court, who refer him to the rev. board, to whom he applies ten years after in 1818. They refer him to the civil court, and 11 years and ten months after, he institutes his suit, the cognizance of the claim barred under the law of limitation.

54. The rule of limitation would be barred by detention in a foreign country. In a case of inheritance it was held to be barred by remittance of money and goods by the present to the absent co-heir.—*S. D. A. Sel. Rep. 22d Feb. 1834, vol. 5, p. 342.*

Law of limitation barred by detention in a foreign country. In case of inheritance, it is barred by remittance made by the present to the absent co-heir.

55. The courts of the Principal Sudder Ameen and the zillah Judge having decided suit, ruling that, according to Mahomedan law, a woman is not competent to execute a deed of relinquishment [*ibranameh*] of her share of patrimonial property in favour of her brother to the detriment of her legal heirs.—the Sudder dewanny adawlut in special appeal, would not go into the question of the legality or otherwise of the deed, but reversing the decisions of the lower courts, dismissed the claim on proof of uninterrupted possession for a period of fifteen years.—*S. D. A. Sel. Rep. 1st March 1836, vol. 6, p. 55.*

In a case of the legality of a deed of *ibranameh*, the claim dismissed on proof of uninterrupted possession for 15 years.

56. The admission of the plaintiff's right to compensation, on account of certain *khatarees* taken by Government, made by a Salt Agent within the period of twelve years antecedent to the institution of the suit, held to be sufficient to render the case cognizable under the rule of limitation.—*S. D. A. Sel. Rep. 22d Dec. 1836, vol. 6, p. 135.*

Admission of plaintiff's right to compensation for *khatarees* within 12 yrs. before the institution of the suit, renders it cognizable under the law of limitation.

57. A right of action, lost under the law of limitation during the life time of the party in whom the right originally vested, cannot be revived by his heir after his death.—*S. D. A. Sel. Rep. 4th Jan. 1837, vol. 6, p. 139.*

A right of action, lost by the law of limitation during the life of the party in whom it was vested, cannot be revived by his heir after his death.

58. The plaintiffs sued for rents of land held by the defendants, due for a period of fourteen years, alleging the existence of another action for other lands between the same parties to account for the delay in the institution of the present action. Held by the Sudder dewanny

Plaintiffs sued for rent of lands held by defendants, due for 14 years, alleging the existence of another

action for other lands between the same parties to account for the delay. Suit rejected under the law of limitation. *p. 231.*

The cause of action arose out of an order of court; calculating the period of 12 years from the date of that order, the claim barred by law of limitation though summary applications had been made subsequently to that date.

In calculating the period for bringing an action under the law of limitation, no allowance is made for the time in which an application to sue as a pauper was before the court.

Within the 12 years of adverse possession a plaintiff sues and obtains a decree for lands sold by the sheriff. After the expiry of the 12 years he sues the defendants for the same property, under a title derived from the purchaser at the sheriff's sale. The cognizance of the suit not barred by the law of limitation.

In an action for arrears of 20 years, plaintiff entitled to a decree for such period as is not barred by the law of limitation.

Law of limitation not applicable to a suit for the adjustment of rents.

Not to a claim to reduction of rent on account of diluvion, preferred during its progress, it would be barred if delayed beyond 12 years after its cessation.

A simple acknowledgment of the truth of a demand not sufficient to constitute a new cause of action so as to bring within the cognizance of a *Moonsiff* a suit, the period for instituting which had elapsed.

The plea of lapse of time will not avail against a claimant during his minority.

Application of the

adawlut that no sufficient cause had been shewn to bar the application of the rule of limitation laid down in Section 14, Regulation 3, 1793.—*S. D. A. Sel. Rep. 28th May 1838, vol. 6,*

59. In an action for recovery of surplus payments of rent, the cause of action in which commenced at the date of an order of court, the Sudder dewanny adawlut applied the rule of limitation, calculating the period of twelve years from the date of such order, notwithstanding that the plaintiff had made certain summary applications to court in connection with the same proceedings, subsequently to such date.—*S. D. A. Sel. Rep. 6th Oct. 1841, vol. 7, p. 50.*

60. In calculating the period for bringing an action, under the general rule of limitation, no allowance can be made for the time during which a mere application for permission to sue *in forma pauperis* is pending in court.—*S. D. A. Sel. Rep. 14th June 1842, vol. 7, p. 96.*

61. The plaintiff having first sued in the Supreme Court to redeem certain lands sold at a Sheriff's sale, and obtained a decree, now sues the present defendants (who could not be made parties to the suit in the Supreme Court for want of jurisdiction,) to recover possession of the same property which is held by them under a title derived from the purchaser at the Sheriff's sale. The suit in the Supreme Court having been commenced within the period of twelve years of the adverse possession of the defendants, it was held by the Sudder dewanny adawlut that the suit in the Mofussil court, though commenced after the expiration of twelve years of such possession, was not, under the circumstances, barred by the rules of Section 14, Regulation 3, 1793, and Clause 3, Section 3, Regulation 2, 1805.—*S. D. A. Sel. Rep. 16th June 1842, vol. 7, p. 67.*

62. In an action for arrears of rent for twenty years, plaintiff entitled on proof to a decree for such period as may not be barred by the statute of limitations.—*S. D. A. Sel. Rep. 26th Sept. 1844, vol. 7, p. 152.*

63. The rule of limitation does not apply to a suit for an adjustment of rents.—*S. D. A. Sel. Rep. 3d Dec. 1845, vol. 7, p. 217.*

64. The law of limitation does not apply to a claim to a reduction of rent on account of diluvion, preferred during the course of diluvion; but if delayed beyond twelve years after its cessation, the claim would be barred.—*S. D. A. Sel. Rep. 23d July 1845, vol. 7, p. 209.*

65. Where the defendants having admitted the truth of the demand, by a written acknowledgment to that effect, can it be construed to constitute a new ground of action, (cognizable by a *Moonsiff*), although the original cause of action is beyond the period of one year? On which the Sudder Court ruled, that a simple acknowledgment to the truth of the demand would not be sufficient to constitute a new ground of action, so as to bring within the cognizance of a *Moonsiff* a suit, the prescribed period for instituting which had elapsed. *Con. 196, 1st March 1845.*

66. The plea of lapse of time will not avail against a claimant during the period of his minority, and the time can only be reckoned against him from the period of his coming of age.—*S. D. A. Sel. Rep. 22d June 1807, vol. 1, p. 192.*

67. A. died in 1790, his natural son, B., and his uncle, C., obtained from the Supreme

Court, letters of administration to his estate, accounts of which they filed in 1796. Soon after C. died; and D., the daughter of another uncle, also died in 1808. In 1815 her representative E. sued for the real estate of A. as heir at law, and in 1820 obtained judgment for one-third, on the ground, that B., C. and D. had, with mutual acquiescence, and equal rights, jointly taken the succession, and C. had bequeathed his share to B. In 1822, E. sued B. for a-third of the personal estate generally as per schedule; but was nonsuited. By direction, he in 1827, brought an action for one-third of a particular debt in the schedule. E. recovered, and it was ruled that he was not stopped by prescription, because D. had died within twelve years from the last instalment of the debt recovered—within twelve years from D.'s death E. had brought his action for one-third of the personal estate of A.—and B., as administrator, [as avowed by the terms of the schedule,] was trustee and depositary on behalf of D. and others.—*S. D. A. Sel. Rep. 7th Feb. 1831, vol. 5, p. 84*

law of limitation to a particular case.

69. A *miscellaneous application* to a Civil court within twelve years cannot be considered as the "preferring a claim" within the meaning of Section 14, Regulation 3, 1793, so as to enable the party to bring his action *after* the expiration of that period.—*Con 813, Cal C. 16th Aug. West, C 6th Sept. 1833*

A "miscellaneous application" is not a preferring a claim within the meaning of reg 3, 1793; see 14

#### *Rule of Limitation on Questions connected with Real Property*

69. An estate having been sold to a person by the managing sharer of it, and the purchaser having, with the knowledge of the coparceners, retained undisturbed possession of it for upwards of ten years this circumstance held by the pundit sufficient to give validity to the sale, and bar any plea of its having been obtained by duress.—*S. D. A. Sel. Rep. 29th Aug. 1801 vol 1, p. 46*

An estate is sold by the managing sharer to a person who holds it in undisturbed possession for 10 years with the knowledge of the coparceners. This bars the plea of its having been obtained by duress.

70. Defendant pleaded adverse possession during more than twelve years plea set aside, as he appeared to have had possession for the greatest part of the time as manager only.—*S. D. A. Sel. Rep. 16th Dec. 1805, vol. 1, p. 118.*

A plea of adverse possession for more than 12 years set aside, as the defendant held it for the greater portion of the time only as manager.

71. Claim to the recovery of lands alleged to be the claimant's right of inheritance barred by lapse of time, under Section 15, Regulation 3, 1793, as well as under Regulation 2, 1805, the defendant, or his ancestor having held *bona fide* possession for more than twelve years antecedent to the suit.—*S. D. A. Sel. Rep. 2d Sept. 1808, vol 1, p. 253*

When the defendant or his ancestor held *bona fide* possession for 12 years antecedent to the suit, the claim is barred by the law of limitation.

72. Claim by appellants to certain lands disallowed, as barred by the rule of limitations, twenty-one years having elapsed from the date of a proclamation inviting their ancestors to sue to the date of the institution of the suit.—*S. D. A. Sel. Rep. 3d March 1812, vol 2, p. 1.*

Claim to lands disallowed, 21 years having elapsed from the date of a proclamation inviting the ancestors of the party to sue to the date of the institution of the suit.

73. The plaintiffs having been irregularly dispossessed from their lands by Government, were allowed the full benefit of the rule of limitation for the cognizance of civil cases.—*S. D. A. Sel. Rep. 30th Aug. 1815, vol 2, p. 156.*

Plaintiffs irregularly dispossessed by govt allowed the full benefit of the law of limitation for the cognizance of civil cases.

74. Claim to a small portion of land in the city of Benares, dismissed on presumption that it had been resumed by the former Government and had been occupied by the Company for full twenty years.—*S. D. A. Sel. Rep. 17th May 1824, vol. 3, p. 354.*

Claim to land in Benares dismissed on the ground that it had been occupied by govt for 20 years

75. Claim for possession of an estate barred by the rule of limitation, the adverse party

Claim for an estate



barred by the adverse party having been in possession for 20 yrs. having been in possession under a deed of sale upwards of twenty years.—*S. D. A. Sel. Rep. 21st July 1825, vol. 4, p. 87.*

Claim to an estate confiscated for rebellion, barred by the confiscation, and long quiet possession of the govt grantee.

76. Government having confiscated an estate, of which the contracting and ostensible sole owner had been slain in rebellion, in which his two brothers had participated, the suit of the son of one brother, [confined for his offence,] for one-third of the estate, in right of inheritance, declared barred by the confiscation, as well as by long quiet possession of the grantee of Government.—*S. D. A. Sel. Rep. 29th May 1830, vol. 5, p. 32.*

Application of the law of limitation in a particular case, and in reference to reg. 25, 1793, sec. 26.

77. In 1211 F. S., the Board of Revenue had separated, from A.'s assessed estates, five *mehals* [recovered at law by B.] at a *junma* deemed just, though much less than the amount imputed to the *mehals* in the details of A.'s contract. In 1225 F. S., A.'s heir sued Government and B., to recover the difference for thirteen years. Ruled that the claim was not cognizable, under general circumstances—and in particular, under Section 26, Regulation 25, 1793, his remedy under which had been indicated by the Provincial court of appeal in 1212 F. S., in an order on a petition of A.—*S. D. A. Sel. Rep. 19th July 1831, vol. 5, p. 130.*

Claim of the heir of the grantor, in a case of an alleged endowment, where A. had bought part of the lands and held possession for 31 years, barred by prescription.

78. Where A. had bought part of the lands of an alleged endowment and kept possession thirty-four years. Held that the claim of the heir of the grantor was barred by prescription. A.'s holding was found *bonâ fide* because the endowment was only nominal, and the purchase by him had been made with the privity of the plaintiff and his ancestor without opposition.—*S. D. A. Sel. Rep. 19th Feb. 1833, vol. 5, p. 268.*

Plaintiffs obtain possession of certain lands under a judgment and after nearly 12 years, sue for mesne profits and interest. No cause for the delay being shown, the court award principal only.

79. The plaintiffs under a judgment in their favour obtained possession of certain lands. On the expiration of nearly twelve years from the date of their obtaining possession they sued for mesne profits with interest. No cause for the delay being shown, the Sudder dewanny adawlut awarded the principal only.—*S. D. A. Sel. Rep. 5th Feb. 1836, vol. 6, p. 52.*

A suit for the recovery of property against the ostensible purchaser, instituted 12 years after the date of the purchase barred by the law of limitation.

80. A suit for the recovery of property at public sale against the ostensible purchaser, on the ground that the plaintiff's ancestor was the real purchaser, instituted upward of twelve years after the date of purchase held to be barred under the law of limitation.—*S. D. A. Sel. Rep. 1th Jan. 1842, vol. 7, p. 67.*

The law of limitation not applied in a suit by a joint proprietor to separate possession, the defendant urging exclusive possession before the Co.'s govt without being able to prove exclusive right.

81. In a suit by a joint proprietor to separate possession of his share, the defendant urging that he had exclusive possession long before the Company's Government, without being able to prove exclusive right, held that the rule of limitation does not apply.—*S. D. A. Sel. Rep. 20th Jan. 1823, vol. 3, p. 202.*

The claims of putteedars to possession of their shares of an estate, of which one putteedar has obtained possession, must be preferred in 12 years from the date on which the proprietor's right was adjudged by the court to the zemindar or one or more coparceners, otherwise, the law of general limitations, comes into operation.

82. Under the provisions of Clauses 2 and 3, Section 35, Regulation 22, 1795, the possession of any one putteedar within twelve years entitles the whole of the sharers to restoration, and by Clause 5 of the same section it is further enacted that such putteedars shall be entitled to restoration on any one putteedar regaining possession, although they have not held possession within twelve years. The doubt which has arisen is whether, after one putteedar has regained possession, there is any limit whatever in point of time with regard to the other sharers bringing forward their claim. The point may be more plainly stated thus; A. obtained a decree of court in 1820 for possession as zemindar, his putteedars B. and C. are in consequence entitled to possession of their shares; but must these claims be brought forward immediately or

at any time before 1822, or is there no limitation whatever?—In reply, I am directed to communicate to you the opinion of the Court, that in cases of the nature of those described in the enactment above cited, the putteedars or “other sharers” alluded to therein must prefer their claims within the period of twelve years from the date on which the proprietary right was adjudged by a decree of court to the zemindar, or one or more of their co-parceners, and that in default of so doing, their claims would fall under the operation of the general rule of limitations.—*Con. 980, West. C. 18th Sept., Cal. C. 23d Oct. 1835.*

83. Does the limitation prescribed in Regulation 2, 1805, apply to a claim for a share of an ancestral undivided estate, still held by a descendant of the family, in which estate the plaintiff had no manner of possession, either as a sharer of a specific portion, or as receiving a maintenance therefrom during a period exceeding twelve years antecedent to the institution of the suit, no good cause (minority and the like) of course being shown to excuse the delay? The Court of Sudder dewanny adawlut for the Western Provinces, in concurrence with the opinion of the Judges of the Court in Calcutta, ruled that the limitation prescribed in Regulation 2, 1805, was applicable to claims of the nature therein specified.—Can a person who still holds, or within twelve years has held possession of a portion of land in an ancestral undivided estate as maintenance, claim to have the estate divided, and his specific share thereof allotted to him? or can the circumstance of his having been content with a maintenance, and not having received a specific portion for a period exceeding twelve years, bar his claim to a separate possession of his own share whenever he thinks fit to demand it? The Judges of the Western Court and the majority of those of the Calcutta Court, were of opinion that, according to the spirit of Clause 10, Section 35, Regulation 22, 1795, the person who had agreed to receive a maintenance, or, as the Regulation expresses it, an allowance either in money or in land, from the principal putteedar, in consideration of his right, has no claim to personal possession or management of any part of the estate.—*Con. 942, Cal. and West. C. 3d April 1835.*

When plaintiff claims a share of an ancestral undivided estate, still held by a descendant of the family, and he had no manner of possession for 12 years before the institution of the suit, no good cause [minority, or the like] being shown to excuse delay, the claim barred by reg. 2, 1805.

The person who has received a maintenance for more than 12 years, either in land or money, from the principal putteedar, in consideration of his right, has no claim to personal possession, or management of any part of the estate.

84. Held, that lapse of time does not bar the right to a division of a joint estate, the several proprietors of which had entered into separate engagements for their respective shares, though such shares had never been actually separated.—*S. D. A. Sel. Rep. 13th March 1823, vol. 3, p. 219.*

Lapse of time does not bar the right to a division of a joint estate, when the proprietors had made separate engagements for their shares, though they had not been separated.

85. Claim for a share of an ancestral estate, adjudged, the rule of limitation not being applicable to the case of *putteedars* deriving a share of profit.—*S. D. A. Sel. Rep. 21st Sept. 1827, vol. 4, p. 91.*

The rule of limitation not applicable to putteedars deriving a share of profit.

86. A lease granted by a zemindar to the dewan of a Collector set aside, notwithstanding the death of the zemindar took place eighteen years before, in consideration of the minority of his heirs and other circumstances.—*S. D. A. Sel. Rep. 13th March 1826, vol. 4, p. 130.*

A lease granted by a zemindar to the dewan of a collector, set aside 18 years after the death of the zemindar, from various causes.

#### *Rule of Limitation regarding Personal Claims.*

87. A personal claim was held not to be barred by lapse of time, where the validity of an engagement, on which it was brought, had been put in issue, [though as a collateral matter,] by the obligor, in a former action, which was finally decided, after twelve years' litigation, the claim being preferred within that period from such final decision.—*S. D. A. Sel. Rep. 5th Dec. 1831, vol. 5, p. 151.*

A personal claim not barred by lapse of time, as it was preferred within 12 years from a previous final decision.

In the case of a bond, &c. the origin of the cause of action is reckoned from the date when the money became payable.

88. In the case of a bond or other instrument for the payment of money, the origin of the cause of action is to be reckoned from the date of the money becoming payable.—See Construction 196.—*S. D. A. Sel. Rep. 23d March 1842, vol. 7, p. 77.*—*Vide Reg. 23, 1814, Sect. 13, as noticed in Con. 196.*

In suits cognizable by moonseffs, the cause of action is not reckoned from the day of the execution of a bond, &c. but from the day it fell due.

89. In suits cognizable by the Moonseffs, is the origin of the cause of action, in cases of bonds or other instruments, to be reckoned from the actual date of the execution of such instrument, or from the date on which the payment has become due, as provided for and specified in the bond or other instrument, and the defendant has failed to discharge it, and to make good his engagement?—In reply to this query the Sudder Court ruled, that in the case of a bond or other instrument for the payment of money, the cause of action cannot be considered to arise previous to the money becoming payable.—*Con. 196, 1st March 1815.*

#### *Rule of Limitation regarding the Claims of the State*

The limitation of 12 years for commencement of civil suits, prescribed by existing regulations, not applicable to any public claims, constituted, on the part of govt., by persons duly authorized.

90. The limitation of twelve years for the commencement of civil suits, under certain provisions and exceptions, which, in pursuance of former rules and practice, has been continued and prescribed by Section 14, Regulation 3, 1793; Section 8, Regulation 7, 1795; and Section 18, Regulation 2, 1803; shall not be considered applicable to any suits for the recovery of the public revenue, or for any public right or claim whatever, which may be instituted by, or in behalf of Government, with the sanction of the Governor General in Council; or by direction of any public officer or officers, who may be duly authorized to prosecute the same on the part of Government.—*Reg. 2, 1805 Sect. 2, Cl. 1.*

All claims on the part of govt., for the cognizance of which no special rule may be in force, declared cognizable.

91. All claims on the part of Government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatever, (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force) shall be heard, tried, and determined in the several Courts of civil justice, to which the cognizance thereof may properly belong, under the General Regulations which have been or may be hereafter enacted, if the same be regularly and duly preferred at any time within the period of sixty years from and after the origin of the cause of action: provided that such cause of action shall not have originated within the provinces of Bengal, Behar and Orissa, before the 12th August, A. C. 1765, or within the province of Benares before the 1st July, A. C. 1775, or within the provinces ceded by the Nawab Vizier before the 10th November, A. C. 1801; being the periods of the Company's accession to the civil government of the above provinces respectively.—*Ibid, Cl. 2*

#### *Rule of Limitation in cases of Violent, Fraudulent, or Unjust Possession.*

The limitation of 12 years also declared as applicable to private claims of right to movable property if the person in possession shall have acquired possession by violence, fraud or

92. The limitation of twelve years fixed by Section 14, Regulation 3, 1793. Section 8, Regulation 7, 1795, and Section 18, Regulation 2, 1803, shall also not be considered applicable to any private claims of right to lands, houses, or other permanent, immovable property if the person or persons in possession of such property when the claim of right thereto may be preferred in a competent Court of judicature, shall have acquired

ed possession thereof by violence, fraud, or by any other unjust, dishonest means whatever; or if such property shall have been so acquired by any other person or persons from whom the actual occupant or occupants may have derived his or their title, and shall not have been subsequently held under a just and honest title (such as inheritance, purchase, fair donation, or any other fair title believed to have conveyed a right of possession and property,) during a period of twelve years antecedent to the time of preferring a claim of right thereto in a competent court: provided that such violent, fraudulent, unjust or dishonest acquisition be established to the satisfaction of the court in which the claim may be preferred; or, if the suit be appealable, to the satisfaction of the proper Court of appeal.—*Ibid.* Sect. 3, Cl. 1.

other unjust, dishonest means.

Or if the person, from whom the actual occupant derived his title shall have acquired possession by such means; and the property may not have been subsequently held, under a fair title believed to convey right, for 12 years.

Provided that such violent, fraudulent, unjust, or dishonest acquisition, be established

93. In all such cases, viz. when the original cause of action may have arisen more than twelve years before the institution of the suit, and the claim may not be cognizable under the exceptions and provisions contained in the Regulations and sections above cited, but may be nevertheless cognizable under the provision made by the preceding clause, from the defendants having acquired possession of the claimed property by violence, fraud, or other unjust and dishonest means: or from the property after being so acquired by any other person not having been subsequently held by the present occupant and his predecessors under a just and honest title during the prescribed period of twelve years: the plaintiff shall set forth the same distinctly, either in his petition of plaint: or in his replication.—*Ibid.* Cl. 2

Mode of proceeding to be observed in the cases provided for by the preceding clause.

Plaintiff to set forth the circumstances of unjust, or dishonest acquisition, in his plaint or replication

94. The court, after taking the answer and rejoinder of the defendant, shall, if the alleged unjust and dishonest acquisition be denied by the defendant, examine any evidence that may be adduced by the plaintiff in proof of his allegation; as well as any evidence that may be brought by the defendant to prove his just and honest acquisition of the property claimed, or the just and honest possession thereof by himself and his predecessors during more than twelve years; after which the court shall determine whether the suit in question be cognizable under the present rule and section or otherwise; and if such determination be in favour of the plaintiff: or in appealed cases, if a determination for the cognizance of the suit be passed by the Court of appeal the merits of the plaintiff's claim of right shall be heard, tried, and determined, notwithstanding the lapse of time, in like manner as if the claim had been regularly preferred within twelve years after the origin of the cause of action.—*Ibid.*

Evidence to be taken from both parties, if the allegation be denied by the defendant.

Determination to be passed by the original court, and by the court of appeal, in appealed cases

And claim of right, if declared cognizable to be tried and determined, as if preferred within 12 years after the origin of the cause of action

95. Provided that, nothing in the preceding clause of the section, or in any part of the existing Regulations, shall be held to authorize the cognizance of any suit whatever in any Court of justice, if the cause of action shall have arisen sixty years before the institution of such suit: nor shall any plea on the part of the plaintiff for the non-prosecution of his claim of right, during a period of sixty years after the origin of his alleged cause of action, nor any original defect of title on the part of the possessor of the property claimed after the lapse of such period, be deemed a sufficient ground for taking judicial cognizance of any suit so preferred.—*Ibid.* Cl. 3

No suit whatever to be held cognizable, in any court of justice, if the cause of action shall have arisen 60 years before the institution of it

96. Moreover, although the property claimed may have been acquired by an in-

Clauses 1 and 2 of

this sec. further declared inapplicable to any private claims to property acquired by an insufficient title within 60 years, if held by the actual occupant, or in his behalf, or by the persons from whom he may have obtained it without molestation and under a title believed to be just and valid, during 12 years antecedent to the institution of the suit.

Provisions already in force as stated in cl. 2 of this section, applicable to all such cases.

sufficient title within the period of sixty years, hereby fixed as the utmost limit for the cognizance of any claims in the established Courts of justice, if the property so acquired shall have descended by inheritance to the person in possession when the claim thereto may be preferred after a lapse of twelve years; or if such person shall have obtained just and honest possession thereof by purchase, fair donation, or by any other title believed to be just and valid, and not appearing to be in any respect collusive for the purpose of depriving the plaintiff of his right, and either such occupant himself or any other person in his behalf, or from whom the property may have been obtained, under any of the titles aforesaid, or the whole in succession shall have held quiet and unmolested possession, under a title believed to be just and valid, during a period of twelve years antecedent to the time of a claim thereto being preferred in a competent court; the provisions made by clauses first and second of this section, shall not be considered applicable to any private claims to property so circumstanced, which are therefore to be deemed inadmissible as heretofore after twelve years from the origin of the cause of action, unless the same be cognizable under the exceptions and provisions already in force.—*Ibid.*

In a claim for lands fraudulently obtained, the limitation of time counts from the date on which the fraud was discovered.

In a claim preferred after the period prescribed by the reg. if the acquisition of adverse possession by fraud or violence can be gathered from the plaint, it need not be declared.

A fraudulent holder of estates alienates them to vendees to whom no fraud was imputable, the plaintiff, a secluded lady in a distant province allowed to recover her share which the vendees had not held for 12 years, the omission to sue for 25 yrs. notwithstanding.

A. brought an action against B and C. for an estate sold by B. to C. 24 years before the institution of the suit, and 22 years before the death of C. Rule of prescription barred by the manifest fraud of C.

Where the fact of fraud, to bar the limitation was clear, S. D. A. did not direct a formal investigation omitted by the lower court.

97. In a claim for lands, of which possession had been fraudulently obtained, the limitation of time can only be counted against the claimants from the date on which the fraud was discovered.—*S. D. A. Sel. Rep. 13th June 1808, vol. 1, p. 239.*

98. In a claim preferred after the period prescribed by the Regulations, it is not requisite to declare that the adverse possession was acquired by fraud or violence, if that can be gathered from the plaint.—*S. D. A. Sel. Rep. 24th July 1822, vol. 3, p. 162.*

99. Where the fraudulent holder of estates had alienated the same to various vendees, to whom no fraud was imputable, it was held that under Section 3, Regulation 2, 1805, the plaintiff (a secluded lady and resident of a distant province,) might recover her share in the estates, which the vendees had not held twelve years, under a title believed good,—the omission of the plaintiff to sue during twenty-five years notwithstanding.—*S. D. A. Sel. Rep. 31st May 1831, vol. 5, p. 123.*

100. A. brought an action against B and C. to recover a share of an estate which B, his brother in whose name it had been bought, had alienated to C. twenty-four years before the institution of the suit, and twenty-two years before the death of C. Rule of prescription held to be barred by the fraud of C. indicated by the abduction, in a prior suit of a deed set aside therein, to prove assent of A. to alienations made by B. Judgment passed by two Judges in opposition to one, who inferred privity and assent of A. from other circumstances, and considered the claim barred by long adverse possession.—*S. D. A. Sel. Rep. 9th Sept. 1833, vol. 5, p. 323.*

101. When the fact of fraud constituting a bar to limitation under Regulation 2, 1805, had been alleged and was clear, the Sudder dewanny adawlut on appeal did not deem it necessary to direct formal investigation omitted by the lower court, and adjudicated on the incident under Section 3 —*Ibid.*

102. In a mixed action, real as to recovery of an estate and personal as regards its *meane profits* during tortuous possession—the plaintiff by judgment of the Sudder dewanny adawlut recovers the estate, under exception of fraud, which by Clause 1, Section 3, Regulation 2, 1805, bars the rule of prescription. But judgment for *meane profits* antecedent to action not passed.—*Ibid.*

In a mixed action real for the estate and personal as regards *meane profits*, the plaintiff recovered the estate because fraud barred the rule of prescription, but *meane profits* antecedent to the action not allowed.

103. I am desired to communicate to you the opinion of the Court, that notwithstanding the mention of the period of sixty years in the Regulation last cited, no claim can now be heard which had its origin beyond the date of the cession, and this without any reference to the mode in which the possession may have been, or may be alleged to have been acquired; and that consequently the rule contained in clause 3, Section 18, Regulation 2, 1803, remains in full force.—*Con. 478, 18th April 1828.*

No claim can now be heard which had its origin beyond the date of the cession without reference to the mode in which it was acquired.

*Rule of Limitation in cases of Mortgage, Pledge and Deposit.*

104. Provided further, that no length of time shall be considered to establish a prescriptive right of property, or to bar the cognizance of a suit for the recovery of property, in cases of mortgage, or deposit, wherein the occupant of the land or other property may have acquired, or held possession thereof as mortgagee or depositary only, without any proprietary right; nor in any other case whatever wherein the possession of the actual occupant, or of those from whom his occupancy may have been derived, shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor.—*Reg. 2, 1805, Sect. 3, Cl 1.*

Further provision for cases of mortgage and deposit.

No length of time to bar the cognizance of suits for the recovery of property in such cases.

105. "Do the provisions of Clause 1, Section 3, Regulation 2 of 1805, apply equally to real and personal property or only to the former, in other words can a suit on a deposit of money or other personal property be entertained after the lapse of twelve years from the cause of action?"—In reply, I am directed to inform you that as the terms of Clause 1, Section 3, Regulation 2, 1805, quoted by you, are general, including "land and other property," its provisions must be considered applicable as well to suits on deposits of money or other personal property as to land.—*Con. 965, West. C 7th July 1835.*

The provisions of reg. 2, 1805, sec 3, cl 1, must be considered applicable as well to suits on deposits of money or other personal property as to those for lands.

106. The rule of limitations cannot affect the right of redeeming mortgaged lands, as tenants in mortgage do not hold under a title capable of forming a right by prescription.—*S. D. A. Sel. Rep. 25th May 1807, vol. 1, p. 185.*

The rule of limitations cannot affect the right of redeeming mortgaged lands.

107. In a transaction partaking of the nature of a simple mortgage, in which the mortgagee was not put in possession of the property mortgaged, it was held that the mortgagee must bring his action, for foreclosure of the mortgage, within twelve years from the date of the expiration of the year of grace allowed to the mortgager for redemption.—*S. D. A. Sel. Rep. 11th Sept. 1841, vol. 7, p. 45.*

Where the mortgage was not put in possession of the property mortgaged the action for foreclosure must be brought within 12 years from the date of the expiration of the year of grace.

108. A. having borrowed money from B. pledges certain lands to him, and goes on a pilgrimage. After fifty years, during which A. is not heard of, his heir sues to recover the land on

A. borrows money of B. on the pledge of lands, and goes on

pillgrimage and is not heard of for 80 years. His heirs sue to recover the lands, on payment of the money borrowed which are adjudged on the presumption of A.'s death, and the suit not being barred by the law of limitation.

An entry in an account of a sum of money payable to a female on her marriage is subject to the ordinary rules of limitation.

payment of the amount borrowed. Adjudged on presumption of A.'s death, and the claim not being barred by the rule of limitations. — *S. D. A. Sel. Rep. 17th March 1812, vol. 2, p. 4.*

109. Held that an entry in an account of a sum of money payable to a female on her marriage, and bearing interest *ad interim* is not of the nature of a deposit, provided for under Clause 4, Section 3, Regulation 2, 1805, but is subject to the ordinary rules of limitation. — *S. D. A. Sel. Rep. 15th May 1814, vol. 7, p. 161.*

#### *Rule of Limitation in cases of Fine and Penalties.*

All suits, complaints and informations, for fines or penalties, recoverable by govt or by the informer, under the regulations, for the recovery of which no specific period may have been fixed, to be preferred within one year after the act for which the fine or penalty may be demandable.

No such suit, complaint, or information, to be admitted after the prescribed period, unless prosecuted on the part of govt, and sufficient cause be assigned for the delay.

The summary proceeding of the civil court for having withdrawn attached property is limited to one year from the occurrence of the act, unless govt. being the party suing there be good cause shewn for the delay.

Suits and complaints for penal damages allowed by the regulations to individuals, and for the recovery of which no specific period may have been fixed, to be preferred within one year after the cause of action shall have arisen, or as soon afterwards as possible.

110. All suits, complaints, and informations, cognizable by the Civil courts of judicature, for the recovery of any fine or penalty receivable by Government, or by the informer, on account of the unlicensed manufacture or sale of intoxicating liquors or drugs; the illicit manufacture or sale of salt or opium, the fraudulent evasion of the stamp duties prescribed by the Regulations; or on account of any other fines or penalties recoverable, either by a regular suit or by summary process, in the Courts of dewanny adawlut, under any Regulation in force which may not have fixed a specific period for the recovery thereof, shall be preferred to the proper courts, in such manner as the Regulations require, within one year after the act, for which the fine or penalty may be demandable, shall have been committed; and no such suit, complaint or information (not otherwise specially provided for,) shall be admitted and proceeded upon in any Court of justice after the period prescribed; unless the same be prosecuted on the part of Government, and good and sufficient cause be assigned why it has not been brought forward to judicial cognizance within one year after the commission of the act whereupon the fine or penalty sued for is demandable. — *Reg. 2, 1805, Sect. 6.*

111. What is the limitation of time in respect to the summary proceeding at the Collector's instance, under Section 14, Regulation 27, 1803, and Section 17, Regulation 28, 1803, in the event of the attached property being removed by force or fraud, by the defaulter, or his people. The Court hold, that the summary proceeding under Section 17, Regulation 28, 1803, which clearly involves the adjudication of a penalty by the Civil court for having withdrawn attached property, is limited in point of time, under Section 6, Regulation 2, 1805, to one year from the occurrence of the act which gives rise to the proceeding; unless Government being the party suing, (which it virtually is, in the person of the Collector,) there be good cause shewn for the delay beyond that period. (*Con. 316, 2d June 1820.*)

112. All suits and complaints for penal damages (viz. for pecuniary penalties on account of any act or omission, in opposition to the Laws and Regulations, exclusive of a compensation for actual losses,) in cases wherein such damages are allowed by the Regulations to individuals, and for the recovery of which by judicial process no specific period may have been fixed, are also required to be preferred to the proper Courts of justice, within one year after the cause of action shall have arisen, or as soon afterwards as it may be in the power of the party aggrieved to prefer the same, and no such suit or complaint

shall be received and proceeded upon in any Court of justice, after the expiration of one year from the time when the alleged cause of action may have arisen, without good and sufficient cause being assigned why the same has not been judicially prosecuted at an earlier period : provided, that this restriction be understood to be strictly applicable to claims to penal damages only (as above described,) and be not considered applicable to any suits for the recovery of the property, or for the value of property, appertaining to the plaintiff; or for a compensation or indemnification on account of any damage to, or loss of property actually sustained by the plaintiff; in all which cases the general rules of limitation are to be applied, as in other suits of individuals for the recovery of their rights in the Civil courts.—*Reg. 2, 1805, Sect. 7.*

Such suit or complaint to be received, after one year, without sufficient cause why it was not prosecuted at an earlier period

But this restriction is not applicable to suits for property, or the value of property, appertaining to the plaintiff, or to suits for compensation or indemnification on account of damage to, or loss of property

The general rules of limitation, as in other suits for recovery of private rights, to be applied in such cases.

#### *Rule of Limitation in cases of Rent*

113. The provisions contained in Section 15, Regulation 7 1799; Section 14, Regulation 5, 1800; and Section 32 Regulation 28, 1803, for the arrest of defaulting undertenants, and their sureties from whom arrears of rent may be due to proprietors and farmers of land, and for a summary enquiry to be made by the Judges of the Zillah and City courts when the parties so arrested for arrears of rent may be brought before them, are from the terms and objects of such provisions evidently intended to be applicable only to recent arrears of rent, due in the course of the current year or immediately after the close of it, and it is hereby declared that the summary enquiry and process authorized by the above Regulations shall not be applied to any arrear of rent, or other demand which may have been due more than a complete year, before the delivery of the petition of arrest and application for such summary enquiry and process, as directed by the Regulations above cited. Provided however that this restriction shall not be considered to preclude the Judges of the Zillah and City courts, (or their Registers, or the Collectors, to whom such enquiry may be committed by them) from including in the adjustment of recent arrears in such cases, any arrear which may be found due beyond the period of one year, if the same shall appear equitable.—*Reg 2 1805, Sect 4 Cl 1.*

Explanation of provisions in existing regulations for summary process to recover arrears of rent.

Applicable to recent arrears of rent only

And not to be applied to any demands due for more than a complete year before the application for such process

But judges, registers, and collectors, in the adjustment of arrears, in such cases may include arrears due for more than one year, if it appear equitable

114. The rule of limitation prescribed by the above clause is also hereby extended to applications for summary process by landholders and farmers, against their agents employed in the management of their estates and farms or in the collection of their rents, under the provisions made by Section 20, Regulation 7 1799 Section 19, Regulation 5, 1800, and Section 37, Regulation 28, 1803 which authorize such process for the arrest and imprisonment of the agents of landholders and farmers, whilst in their service, or immediately after the resignation or dismissal of agents of the above description, on account of demands for money in their hands, or for accounts which they may refuse to render, or for any matter relating to the discharge of their respective trusts.—*Ibid, Cl 2.*

Limitation in above clause extended to applications for summary process by landholders and farmers, against their agents, under existing regulations

115. The rules prescribed in Regulation 2, 1805, in regard to the institution of summary

Limitation of time



for instituting summary suits for the recovery of indigo advances

An action for the refusal of receipts for rent paid must be brought in one year from the cause of action

suits for rent, should be applied to suits for the recovery of advances for indigo, instituted under Regulation 6, 1823.—*Con.* 565, 9th July 1830.

116. Under Section 63, Regulation 8, 1793, A. brought an action against B. for having refused to give him receipts for rent paid. The suit was dismissed with costs because no dishonest intention was proved against B., and because A. had not brought the suit within one year from the date when the cause of action originated as required by Section 7, Regulation 2, 1805.—*S. D. A. Sel. Rep.* 14th April 1835, vol. 6, p. 26.

#### SECTION IV.

##### *Valuation of Suits*

General rule for the valuation of suits

117. In suits for lands paying revenue to Government, if forming one entire mehal, or a specific portion thereof, with a defined jumma, the value shall be assumed in the Ceded and Conquered Provinces, including Cuttack at the amount of the annual jumma, payable to Government on account of the mehal or portion thereof, as aforesaid, and where the land has been assessed in perpetuity, at three times the amount of the annual jumma. In suits for lakhuraj lands, *i. e.* lands not paying revenue to Government, the value shall be assumed at eighteen times the amount of annual rent by computation. In suits for damages, compensation for injury, loss of caste, and the like, the amount shall be computed at the rate assumed by the plaintiff. In suits for houses, gardens, and other things of value, real or personal, not of the descriptions before specified, as well as for any interest in malgoozaree land not capable of valuation under the above rule, the amount shall be computed according to the estimated selling price, and every plaint shall specify the value of the thing claimed, and if the value thereof be understated, in the proportion of ten per cent. and the plaintiff have not before completion of the pleadings filed a second or duplicate plaint on stamped paper equal to the difference under the rule contained in Clause 1, Section 7, Regulation 26 of 1814, the defendant shall be entitled, on adducing proof of the same, to obtain a nonsuit, to which effect the courts are hereby required to pass judgment in such cases—anything in the existing Regulations to the contrary notwithstanding.—*Reg.* 10, 1829, *Sch. B, Art. 8*

Valuation for talooks, &c. instituted before and after reg. 10, 1829.

118. In suits for *talooks, ousut talooks, hawallahs or ousut hawallahs*, if instituted prior to the enactment of Regulation 10, 1829, the Judge, in determining the value of the cause of action, will be guided by the provisions of Section 7, Regulation 26, 1814. In suits instituted subsequently, the rules contained in paragraph 4, Article 8, Schedule B, Regulation 10, 1829, are applicable.—*Con.* 687, 27th April 1832.

To what suits the penalty of nonsuit in the concluding part of art. 8, sch. B, reg. 10, 1829, is applicable.

119. The penalty of nonsuit provided in the concluding part of Article 8, Schedule B, Regulation 10, 1829, is applicable to all suits in which the conditions contained in those provisions have not been complied with.—*Con.* 577, 5th Nov. 1830.

A summary appeal will lie from the decision of an unconv. J.,

120. In the event of a plaintiff being nonsuited under the provisions of Article 8, Schedule B, Regulation 10, 1829, on the ground of the value of the thing claimed being underrated

in the proportion of ten per cent., though a summary appeal will not lie under Section 8, Regulation 26, 1814, the principle of Section 4, Regulation 13, 1808 may be considered to apply. Consequently a summary appeal may be had from the decision, in such case, of a Principal Sudder Ameen, or Sudder Ameen, [and since the enactment of Act XXII 1838, of a Moonsiff.] — *Con. 872, West. C. 21st Feb., Cal. C. 24th Oct. 1834.*

nonsuited a plaintiff under act. 8, sch. B, reg. 10, 1829.

121. The Court are of opinion that, if the land, the right of pre-emption of which is claimed, be land paying revenue to Government either as an entire mehal, or a specific portion thereof with a defined jumma, the cause of action must be estimated at three times the amount of the sudder jumma, as prescribed by Article 8, Schedule B, Regulation 10 of 1829; if lakhiraj, at eighteen times the amount of the computed annual rent; and if it be land paying revenue to Government, but neither an entire mehal nor a specific portion with a defined jumma, at the estimated selling price.—*Con. 1017, Cal. C. 23d Sept., West. C. 14th Oct. 1836.*

How suits are to be valued in cases of pre-emption.

122. Held, on a reference from the Judge of Meerut, that in suits for fractional portions of malgoozaree estates, the valuation according to the note at Article 8, Schedule B, Regulation 10, 1829, is to be computed on a portion of the jumma of the entire estate corresponding with the fractional share sued for; and not, as has been the erroneous practice in some districts, according to the estimated selling price:—Thus, for instance, if the suit be for a four-anna share of an estate, assessed at 1000 rupees, and within the range of the perpetual settlement, the valuation will be 750 rupees, or three times the jumma (250 rupees) of the fractional portion.—*Con. 1340, West. C. 18th May, Cal. C. 17th June 1842.*

How the value of a suit for fractional parts of malgoozaree estates is to be computed.

123. The value of certain malgoozaree lands, not bearing a defined jumma, having been computed at the rate of an arbitrary jumma fixed upon it by the plaintiff, instead of its estimated selling price, held that the plaintiff must be nonsuited.—*S. D. 1. Sel. Rep. 16th Feb. 1811, vol. 7, p. 19.*

How the value of malgoozaree lands, not bearing a defined jumma, is to be computed.

124. The Government, having resumed a jaghure, situated in the district of Benares, concluded a zemindary settlement of it with the jaghirdar for a term of years; another party claiming the proprietary right of the estate, has brought the present suit to establish the same, and the question that arises is as to the manner in which he should value his claim; whether at the annual jumma at which the estate has been assessed, or at three times the amount, or under the general rule contained in para. 4 of the note annexed to the article in question, according to the estimated selling price.—The Court observe, that the first part of the note abovementioned, merely declares, that in suits for lands situated in the Ceded or Conquered Provinces, including Cuttack, the value shall be assumed at the amount of the annual jumma, or where the land may have been assessed in perpetuity at three times the amount of the annual jumma, but makes no provision for cases of the nature of that in point, where the land is neither situated in the Ceded or Conquered Provinces, nor permanently assessed. It appears, however, to the Court to be a fair and equitable principle to observe in such cases the distinction laid down in the first part of the note above cited, the reasons of which are obvious; and they propose to act upon it accordingly in disposing of the appeal now before them.—*Con. 1143, West. C. 24th March, Cal. C. 6th April 1838.*

Where the settlement is not permanent, the value must be assumed at one year's jumma, where the land is permanently settled, at three times the annual jumma.

125. In a suit instituted by a Collector against a farmer and his sureties under Sections 26 and 28, Regulation 27, 1803, the amount of action must be regulated by the jumma of the

How the value of a suit instituted by a collector against a

farmer and his sureties, under reg. 27, 1803, sec. 26 and 28, is to be estimated. estate from which the arrear is due ; and not by the amount of the fine to be levied, which is left to the discretion of the court to fix.—*Con.* 808, *West. C. 2d, Cal. C. 30th Aug. 1833.*

How the amount of action in suits for lands paying revenue to govt., not an entire estate or a specific portion of it with a defined jumma, is to be computed.

126. The Court having reason to believe, from instances which have come to their knowledge, that in some zillahs a practice still obtains of computing the amount of action in suits for lands paying revenue to Government, not forming an entire estate, or a specific portion thereof with a defined jumma, at the annual produce of the lands ; direct me to call your attention to the 4th paragraph of the note on Article 8 of Schedule B, Regulation 10, 1829, which requires that the amount in such cases shall be computed according to the estimated selling price of the land sued for.—*Cir. Ord. Cal. and West. C. 23d Aug. 1833.*

How a suit for the possession of lands and mesne profits during dispossession is to be computed

127. In a suit for possession of lands and mesne profits during dispossession, it is not necessary that the annual produce and profits during dispossession should each exceed the sum of 5,000 rupees, to make the suit originally cognizable in the Provincial court ; but only that the aggregate amount of both should exceed that sum.—*S. D. A. Sel. Rep. 30th Aug. 1814, vol. 2, p. 125.*

Rule regarding suing for two or more distinctly assessed mouzahs in one action

128 I am directed to state, that if the cause of action be one and the same, a plaintiff may sue for two or more distinctly assessed mouzahs, or mehals, in one and the same action, laying his plaint at the aggregate value of the whole sued for.—*Con.* 577, 5th Nov. 1830.

Value of suits for lakkuraj land in which govt. is not entitled to any revenue from the land, if resumed

129. In suits for lakkuraj land in which Government would not be entitled to any revenue from the land, if resumed, the petition of plaint must be written on the stamped paper prescribed for rent-free lands, whether the claim be by an individual against a *zemindar* to hold land on a rent-free tenure, or by a *zemindar* to resume land held on an illegal rent-free tenure.—*Con.* 576, 1st Oct. 1820

Value of suits for manfee estates when the jumma has been fixed by the govt. officer

130. The Court are pleased to promulgate for general information the following rule which has received the sanction of the Supreme Government:—Suits for the proprietary right in manfee estates in cases where the jumma, payable by the proprietors to the *maafeddar*, has been fixed by the Government officer, may be instituted according to the rule laid down in Note I, Article 8, Schedule B, Regulation 10, 1829.—*Cir. Ord. 4th June 1847.*

How the interest of the party claiming an *ijarah* or *jote*, is to be estimated

131. Though the land included in an *ijarah*, or in the *jote* of a cultivating ryot, is not transferable by sale, the interest of the party claiming the *ijarah* or *jote* is capable of being valued, and that in the cases, supposed by you, the plaintiff should be allowed to lay his suit at the amount which he may consider the value of his interest in the thing claimed ; to which if the defendant make objection, the court would decide thereon after making the summary enquiry directed by Section 4, Regulation 13 of 1808.—*Con.* 702 *Cal. C. 6th, West. C. 27th July 1832.*

How the value of a suit, instituted by a resident cultivator to reverse the summary decision of a collector against and ejecting him as a defaulter, is to be estimated.

132. In suits instituted in the court of a Moonsiff by a resident cultivator to obtain a reversal of a summary decision passed by a Collector, adjudging a balance against him and ejecting him as a defaulter, the value of the suit should be estimated at the amount of the rent in dispute, or in other terms, at the sum sued for in the first instance.—*Con.* 862, *West. C. 7th, Cal. C., 28th Feb. 1834.*

How suits by *khasatkars* against proprietors, and by proprie-

133. The rules for estimating the value of property, real or personal, claimable by action in the Civil courts, contained in Section 14, Regulation 1, 1814, Section 23, Regulation 26, 1811.

and Section 5, Regulation 19, 1817, have been either formally or virtually superseded by the provisions of the note attached to Article 8 of Schedule B, referred to in Section 17, Regulation 10, 1829, but no provision is expressly made in the fourth paragraph of the note in question, to meet the description of suits contemplated in the penultimate paragraph of Section 5, Regulation 19, 1817, above quoted, as per extract in the margin. The question I would ask therefore

is, whether the rules lately enacted, namely, those prescribed in the said fourth paragraph of the note to Schedule B, of Regulation 10, 1829, are applicable to such cases, as well as to suits of the description particularised below, and

It the suit be not for a right of property, or for a permanent tenure but for a term leasehold of any denomination during a limited term, or for any interest in the land during a limited term only, the valuation of the plaintiff's claim, in pursuance of the Regulations above mentioned is to be made according to the market estimate that can be formed of the actual value of the thing sued for

is, whether the rules lately enacted, namely, those prescribed in the said fourth paragraph of the note to Schedule B, of Regulation 10, 1829, are applicable to such cases, as well as to suits of the description particularised below, and

1. All other actions whatsoever, not coming within the meaning of the first three paragraphs of the note. 1. Suits of khastkars against the proprietors of the land whether used or rent free, to maintain, preserve, or obtain possession of their right of cultivation in a given quantity of land, held on a pottah by prescription or otherwise, or suit to reverse a summary decision of ejectment passed against them in the zemindars favour under the provisions of Regulation 49, 1793. 2. Suits on the part of the proprietors whether malguzars, or malikdars, to eject an under-tenant from the land held by him in ryoty tenure. The Court propose, with the concurrence of the Calcutta Court, to inform Mr. Smith that Section 5 Regulation 19, 1817 as well as all other existing Regulations relating to the imposition levying and collecting stamp duties is rescinded by Section 2, Regulation 10 1829. As the latter enactment contains no express provision for computing the amount value of suits of the nature of those described in his letter, they must be considered as falling under the general rule laid down in the fourth paragraph of the note to Article 8 Schedule B, that Regulation—*Com 1101, West C 4th, Cal C 25th Aug 1837*

14. Held, that suits instituted with a view to fix the jumma of ryots' holdings should be rated one year's rent—*Com 1272 Cal C 31st Jan West C 19th June 1840*

Value of suits for the jumma of ryots' holdings

135. In suits brought by a mortgagor to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property but regard being had to the rule laid down in the Regulation for estimating that value and not on the sum for which the property was mortgaged. This appears distinctly to be the intent of Article 8 Schedule B, Regulation 10 1829 under which the stamp is regulated by the value of the thing claimed—*Com 1101 West C 17th June, Cal C 7th Aug 1837*

If a suit is brought by a mortgagor to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property but regard being had to the rule laid down in the Regulation for estimating that value and not on the sum for which the property was mortgaged.

136. The silver rupee having ceased to be a legal tender on the 1st January, 1838, (Act XIII 1836,) the Court of Sadler dewanny adawlat in the Lower and Western Provinces have been pleased to determine in supersession of (Construction 1068, that all questions regarding the value of stamped paper, and the amount of suits recoverable by the different classes of Native Judges, shall be determined with reference to the existing, and not to the old currency. In accordance with this rule, the Moonsiffs (for instance) will not have cognizance of suits in which the amount contested may exceed 300 Company's rupees and the stamp required for a plaint in a suit for the sum above mentioned will be valued at sixteen rupees—*Civ Ord 15th April 1842*

All questions relating to the value of stamped paper will be determined with reference to the existing, and not to the old currency.

137. The following question was put to the Sadder dewanny adawlat for the North Western Provinces by the Judge of Cawnpore—"I have a suit before me for possession of a

How the value of a suit to recover a government note for 4 per cent.

sa. rs. 7,000 pledged for rs. 4,000, and redeemable for rs. 4,930 is to be estimated.

Government Four per cent. promissory note for 5000 sicca rupees and have some doubt whether the appeal should not have been made to the superior court."—*Reply*.—The majority of the Court do not think any legal objection exists to the Judge hearing the appeal. They observe the suit is not brought for the recovery of 5000 sicca rupees, but for a document valued at 5000 Company's rupees, and which, if now sold in the bazar, would certainly not realize the sum at which the suit is brought. It was pledged for Rs. 4,600, the amount of which it is said to be redeemable is 4,930.—*Reply of the Calcutta Court*.—I am directed by the Court to acknowledge the receipt of your letter, No. 1557, of the 5th ultimo, and to state, in reply, that the suit in question having been brought to recover possession of a Government promissory note for rupees 5000, without mention of any currency, which amount is covered by a stamp of 150 rupees, and no objection having been urged against the valuation in the Court of first instance, the Court are of opinion, with the majority of the Western Court, that the appeal lies to the Zillah court.—*Con.* 1358, *West. C. 5th Aug., Cal. C. 2d Sept. 1842.*

The sa. rs. to be taken at par with the co's rs. in estimating the amount of stamp duty leviable on actions.

138. Held by the Sudder dewanny adawlut that the sicca rupee is to be taken at par with the Company's rupee in estimating the amount of stamp duty leviable on actions instituted in the Company's courts. A. had his appeal in sicca rupees 9,639, on a stamp of 250 rupees. B. pleaded that the amount appealed from ought to have been reduced to Company's rupees 10,291, and a stamp of 350 used. Plea of B. overruled.—*Rep. Sum. Cases, 18th May 1839, p. 20.*

In a suit to recover on an account in sicca, if the agreement was for value and not for specific coins, the calculation must be made in co's rs. 106-10-8, per 100 sicca rs.

139. In a suit to recover on an account kept in sicca, supposing the agreement to be for value, and not for specific coins, the calculation must be made at Company's rupees 106-10-8 per 100 sicca, or the intrinsic difference.—*Con.* 1151, *27th April 1838.*

Petitions of persons claiming property in moonsiffs' courts under reg. 5, 1831, sec. 6, must be on unstamped paper.

140. The Court are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under Clause 4, Section 6, Regulation 5, 1831, should be considered as an application "in relation to matters pending" before the court, and that, with reference to the omission of the Moonsiffs in Article 7, Schedule B, Regulation 10, 1829, and to the provisions of Clause 2, Section 9, Regulation 5, 1831, such application in the courts of the Moonsiffs should not be written on stamped paper.—*Con.* 706, *Cal. C. 20th July, West. C. 17th Aug. 1832.*

A moonsiff may try a suit brought by a holder against his tenant to enhance the rent payable by the latter.

141. For the consideration and orders of your court I submit copy of a petition presented by Ramtonoo Pal, and beg to be informed whether with reference to the Regulations noted in the margin, a Moonsiff is empowered to try so important a case as that alluded to by the petitioner. Ramtonoo states that hitherto he has never paid more than 32 rupees per annum, whereas you will observe, the zemindar, Roy Gungadthur, claims 206 rupees 12 annas, in other words he demands (supposing the petitioner's account to be true) an increased yearly income of rupees 175 in perpetuity, equivalent to a principal sum of rupees 1,500 or 2,000, calculating at the rates of interest current in Bengal. My own opinion is that suits of this value should be referred for trial to the Principal Sudder Ameeris.—I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, and in reply to inform you that the suit alluded to by you, being for a sum of money not exceeding 300 rupees, is cognizable by the Moonsiff under Clause 2, Section 5, Regu-

lation 5, 1831. The Court do not approve of the suggestion contained in the concluding part of your letter as a general rule, but observe that you are competent, in the particular case in question, to refer the suit to the Principal Sudder Ameen under Section 7 of the Regulation above quoted.—*Con. 811, 2d Aug. 1833.*

142. I am directed by the Court to acknowledge the receipt of your letter of the 5th instant regarding the calculation of stamp on petitions of plaint, &c. In reply, I am directed to inform you that the practice of your court of excluding the fractional parts of a rupee from such calculations is irregular; any sum however small constituting an excess requiring an increase of stamp.—*Con. 874, West. C. 14th March, Cal. C. 4th April 1834.*

a rupee are not to be excluded in calculating the value of stamps.

143. Section 2, Regulation 10 of 1829, the Court observe, rescinds all Regulations and parts of Regulations then existing in regard to the collection of stamps, and as it contains no provision exempting Clause 7, Section 30, Regulation 2 of 1819, from its operation, the latter enactment must be held to have been repealed by it equally with all other laws on the same subject; and it having been ruled by the two courts, [Construction 768] with reference to the provisions of the Regulation first cited, and in consequence of Section 8, Schedule B, Regulation 10 of 1829, making no exception in favour of petitions for special appeals in cases of the nature of those under consideration, that full stamp duty is leviable thereupon, the Court consider that by a parity of reasoning, petitions for a regular appeal in such cases as well as the pleadings, exhibits, &c. connected therewith are also chargeable with the full amount of duty, in the same manner as all other regular suits instituted in the established Court of civil judicature.—*Con. 987, West. C. 25th Sept. 1835.*

Petitions of appeal from the decisions of the collector under reg. 2, 1819, must bear on the full stamp

144. A., having obtained a decree, points out certain lands for sale in satisfaction thereof, the property as he alleges of the defendant B., a claimant, however, interposes his claim, which is allowed and the sale stopped, when A. is recommended, if he has still any claim, to file a regular suit. He accordingly brings a suit to obtain the sale of certain lands in realization of his decree. The question arises—how is A. to estimate the value of his suit, according to the note on Article 8, Schedule B, Regulation 10 of 1829? It was held that as the suit in question was brought, not for possession, but to obtain leave to sell the interests of the original defendant in the estate, and to appropriate the proceeds of sale in liquidation of A.'s claim, or, in other words, as the suit was for the amount that the estate would sell for, the value should have been computed at the estimated selling price, (or the amount of plaintiff's claim under the decree, supposing the selling price to have been in excess of that claim,) according to the fourth clause of the note on Article 8, Schedule B, Regulation 10, 1829, the suit being viewed rather as for an interest in malgoozree land, not capable of valuation under the first clause of the note.—*Con. 1301, West. C. 25th June, Cal. C. 16th July 1841.*

How a suit to obtain the sale of lands in execution of a decree should be valued.

145. Held that the valuation of a suit to recover possession of a *mela* or *fair*, at eighteen years' produce, is unnecessary. The plaintiff may lay his action at the estimated value of the interest claimed.—*S. D. A. Sel. Rep. 21st Jan. 1846, vol. 7, p. 225*

Valuation of a suit to recover possession of a *mela* or *fair*

146. The Circular order, Sudder dewanny adawlut, 20th April, 1818, which provides that in case of a money bond, the stamp is to be calculated on the principal sum lent, does not apply to the value of stamp for plants for the recovery of money; in which case the aggregate of principal and interest is to regulate the value of the stamp.—*Con. 409, 2d Dec. 1825.*

In plants for the recovery of money, the aggregate of principal and interest regulates the value of the stamp.

The sum for which the suit is instituted must regulate the stamp, not the whole amount under the bond, which is not claimed.

147. The provisions of Article 8, Schedule B, Regulation 10, 1829, distinctly state, that the amount of the stamp on plaints shall be regulated by the amount or value of the property claimed; the Court are therefore of opinion that, as the law stands, the sum of money for which the suit is instituted should regulate the amount of the stamp, not the whole amount under the bond, which is not claimed.—*Civ. Ord. Cal. and West. C. 31st Aug. 1832.*

If the plaintiff means to try the main question of a bond, but files his plaint on a stamp equal to an instalment only, he must be nonsuited.

148. As to the second point, supposing that the plaintiff means in reality to try the main question of the bond, but under pretence of suing merely for the instalment, files his plaint on a stamp equal to that instalment only, he will be liable to be nonsuited in whatever court his suit is taken up.—*Ibid.*

Costs of suit not to be added to the original amount of action, in cases of appeal.

149. Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the Judge at Sylhet, that the practice of estimating the value of the property claimed, in appeal, by adding the costs of suit to the original amount, is improper.—*Con. 1190, Cal. and West. C. 11th Dec. 1838.*

Valuation of a suit by the collector for the forfeiture of an estate for resistance or evasion of process.

150. In a suit by the Collector for the forfeiture of an estate for resistance or evasion of process the amount of action must be calculated on the *sudder jumma* of the estate for the consideration of which the Collector sues, and not on the amount of the arrear due.—*Con. 386, 27th May 1825.*

A summary appeal will lie from an interlocutory order regarding the value of property sued for.

151. Held that a summary appeal will lie from an interlocutory order, passed in the course of a regular suit, regarding the valuation of the property sued for.—*Rep. Sum. Cases, 19th April 1841, p. 6.*

The value of the principal includes that of the subordinate right.

152. The value of the principal includes that of the subordinate right.—*Rep. Sum. Cases, 16th March 1846, p. 77.*

The value of a suit on appeal to be calculated by the sum awarded and not that originally claimed.

153. The lower court having given a decree for a sum less than the amount claimed, the defendant is at liberty to appeal, estimating his appeal at the amount awarded, instead of at that originally claimed.—*Rep. Sum. Cases, 14th June 1841, p. 11.*

## SECTION V

### *Cases in which suits have been over or undervalued.*

Nonsuit for undervaluing the value of the thing claimed in the proportion of ten per cent.

154. Every plaint shall specify the value of the thing claimed, and if the value thereof be understated, in the proportion of ten per cent. and the plaintiff have not before completion of the pleadings filed a second or duplicate plaint on stamped paper equal to the difference under the rule contained in Clause 1, Section 7, Regulation 26 of 1814, the defendant shall be entitled, on adducing proof of the same, to obtain a nonsuit, to which effect the courts are hereby required to pass judgment in such cases—anything in the existing Regulations to the contrary notwithstanding.—*Reg. 10, 1829, Sch. B, Art. 8.*

An action not liable to nonsuit unless the value be understated in the proportion of ten per cent.

155. An action is not liable to nonsuit, from the difference between the value stated and the proper value of the property sued for affecting the stamp duty on the petition of plaints, unless the value be understated in the proportion of ten per cent.—*Rep. Sum. Cases, 9th Dec. 1845, p. 73.*

156. It is no ground of nonsuit that the value of the property has been overestimated.—*Rep. Sum. Cases, 16th Dec. 1845, p. 74.*

An over-estimate of the value of the property no ground for a nonsuit.

157. If during the trial of any regular suit it shall appear that the plaint has been written on stamped paper of a less value than that which ought to have been used under the provisions of Sections 13 and 14, Regulation 1, 1814, [now Reg. 10, 1829.] and the courts shall be of opinion that the error or omission did not arise from any fraudulent motive, or from any design on the part of the plaintiff to evade the provisions of the Regulations, it shall be competent to the court, either to permit or to direct the plaintiff, or appellant, in the suit to file a duplicate of the plaint on stamped paper of such a value, as may be sufficient to complete the full amount of the stamp duty prescribed by the sections above mentioned.—*Reg. 26, 1814, Sect. 7, Cl. 1*

In what cases the courts may authorize a plaintiff to file a duplicate of the plaint, for the purpose of correcting errors in the valuation of the cause of action.

158. In addition to the provisions of Section 4, Regulation 13, 1808, it is hereby declared, that if on the trial of any summary appeal preferred under that section, the Provincial court shall be of opinion, that the original suit was not from its amount regularly cognizable in the Zillah or City court, but that the irregularity in the institution of such suit did not arise from any fraudulent motive on the part of the plaintiff, it shall be competent to the Provincial court to direct the zillah or city Judge to refund to the plaintiff the amount of the fee or stamp duty paid by him, on instituting the suit in the Zillah or City court, and the plaintiff shall be permitted to institute his suit *de novo* in the Provincial court.—*Ibid. Cl. 2*

Provision for the repayment to a plaintiff of the stamp duty on institution fee in certain cases.

159. If the plaintiff in a Zillah or City court shall state his cause of action, as not exceeding five thousand sicca rupees, and the defendant shall, in answer, deny such statement and allege the produce, amount or value, to be such as to render the suit not cognizable by the Zillah or City court, under this Regulation, the Judge of that court, previously to entering upon any investigation of the merits of the cause shall make such enquiry as may appear necessary to ascertain whether the suit be, or be not receivable, in the Zillah or City court; and shall pass an order accordingly; leaving either party, who may be dissatisfied therewith, to prefer a summary appeal therefrom, to the Provincial Court: whose decision shall be final upon the question, whether the suit be cognizable, or not, in the Zillah or City court. But no such objection to the plaintiff's statement of the cause of action shall be received from the defendant, unless offered, in the first instance, in answer to the plaint. Nor shall any appeal from the order of the zillah or city Judge, in such cases, be open to the Provincial court, unless preferred within one month after the order appealed from is passed; or unless sufficient reason be assigned, to the satisfaction of the Provincial court, why it was not preferred within that period.—*Reg. 13, 1808, Sect. 4, Cl. 1.*

Disputes between parties respecting causes instituted in a zillah or city court, being cognizable or not by such court under this regulation, by whom and under what rules to be decided

160. In suits which may be instituted in the Provincial court, if the plaintiff shall state his cause of action to exceed five thousand sicca rupees, and the defendant shall, in answer, deny such statement, and allege the produce, amount or value, to be such as to render the suit cognizable by the Zillah or City court, in the first instance, the Provincial

Disputes between parties respecting any cause, instituted in a prov. court, being cognizable or not in the first instance by that court, how and



under what rules to be decided

court shall cause such enquiry to be made, as may appear necessary, to ascertain whether the suit be cognizable in the Zillah, City, or Provincial court, under the provisions of this Regulation; and the determination of the Provincial court, upon this point, shall be final. Provided, that no such objection to the plaintiff's statement of the cause of action shall be received from the defendant unless offered, in answer to the plaint, in the first instance. — *Ibid.* Sect. 5, Cl. 1.

If decided to be cognizable by a zillah or city court, to be instituted *de novo* in such court.

161. In the cases provided for in this section, if the Provincial court determine that the suit is cognizable in the Zillah or City court, the institution fee paid by the plaintiff shall be returned to him; and he shall be left to institute his suit, *de novo*, in the Zillah or City court. If any pleadings shall have been employed in the Provincial court, that court shall adjudge to them such proportion of the established fee, not exceeding one-fourth, as they may judge adequate; to be paid by the plaintiff — *Ibid.* Cl. 2

Where the aff states that the value of the property has been overvalued, the P. S. A. must enquire into the plea, before trying the merits of the case.

162. The defendant having pleaded in a case before a Principal Sudder Ameen that the plaintiff had greatly overvalued the property which formed the subject of action, such excess of valuation making the case appealable to the Sudder dewanny adawlut instead of to the zillah Judge, the Court held that the Principal Sudder Ameen was bound, in the spirit of Section 5, Regulation 15, 1808, to enquire into the plea before proceeding to try the merits of the case — *S. D. A. Sel. Rep. 3d July 1841, vol. 7, p. 11.*

Where the aff states that the value of the property is underrated, the plea must be examined before the pleadings are completed.

163. I am directed by the Court to request that, whenever the defendant in a regular suit may plead that the plaintiff has underrated the value of the property sued for, either with a view to evade the stamp duty, or to render the suit not cognizable in appeal to the Queen in Council, you will before the pleadings are completed, make such enquiry as you may deem proper, for the purpose of ascertaining the correctness of the allegation; and that having done so you will pass an order accordingly, leaving the party, who may be dissatisfied therewith, to prefer a summary appeal therefrom to this Court. You will have the goodness to communicate this order to the Principal Sudder Ameen of your district — *Cur. Ord. 19th June 1840.*

Def's objection to valuation of property must be urged in the Court of first instance.

164. Defendant's objection to valuation of property should be urged in the Court of first resort, and cannot be urged as a matter of right in the Court of appeal. — *S. D. A. Sel. Rep. 25th May 1836, vol. 6 p. 68.*

Def's objections to the valuation of property must be generally brought forward in answer to the plaint.

165. An objection by defendant to the valuation of the property sued for, cannot be entertained by the Court of original jurisdiction, unless pleaded in answer to the plaint, or by the appellate court, unless so pleaded, and the order thereon, if against the defendant appealed from, either summarily or regularly — *S. D. A. Sel. Rep. 17th Dec. 1846, vol. 7, p. 284.*

Then

166. I am directed to refer you to Article 8, Schedule B, Regulation 10, 1829, and to observe that the objections of the defendant to the plaintiff's valuation should generally be brought forward in his answer to the plaint, when the presiding Judge, after such summary enquiry as may appear necessary, may permit the plaintiff, should the value be underrated, and without apparent fraudulent intent, to file a supplementary plaint agreeably to the provisions of Section 7, Regulation 26 of 1814. This decision will be liable to alteration or reversal by the Court having appellate jurisdiction, either summarily or on a regular appeal. Cases may also arise in which, though the defendant have not objected to the plaintiff's valuation of the prop-

erty in the Court of primary jurisdiction, it would be the obvious duty of the Court trying the appeal to notice and rectify the same.—*Con.* 1046, *West. C.* 2d, *Cal. C.* 16th Sept. 1836.

167. A summary appeal may be had from a nonsuit passed under Article 8, Schedule B, Regulation 10 of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the Sudder Ameen or Principal Sudder Ameen was erroneous.—*Con.* 872, *West. C.* 21st Feb., *Cal. C.* 24th Oct. 1834.

A summary appeal may be had from a nonsuit for undervaluation of property.

[The following are the latest rules for the guidance of the Zillah and inferior courts, regarding cases in which the petition of plaint has been written on a stamp of inferior value, or in which the defendant may object to the plaintiff's valuation of the contested property.]

168. In the event of its coming to the knowledge of the Court of original jurisdiction or appeal, that the plaint in any suit has not been written on paper of the proper value, the court in which the error may be detected shall proceed under Clause 1, Section 7, Regulation 26 of 1814, either nonsuiting the plaintiff, should any fraud be apparent, or permitting him to file a duplicate of the plaint, should no fraudulent intent be presumable.—*Cur. Ord.* 20th Aug. 1811, *par.* 1.

Course to be pursued when the court discovers that the plaint has not been written on paper of the proper stamp.

169. When the error of valuation in the original suit may be discovered in appeal, the appellate court, if the more indulgent process is determined on, shall return the plaint and the decree, retaining the case on the file, to the lower tribunal, for the purpose of having a duplicate plaint filed, and the necessary alteration made in the costs; and, on the return of the document, shall then proceed to dispose of the appeal on its merits.—*Ibid.*, *par.* 2.

Procedure when the error of valuation in the original suit is discovered in appeal.

170. In suits of the nature described in Clause 1, of the note to Article 8, Schedule B, Regulation 10, 1829, the objections of the defendant to the plaintiff's valuation of the property sued for, as well as any other objection relative to the value of the stamped paper on which the plaint is written, must be brought forward in his answer to the plaint, and no such objections can be urged as a matter of right by the defendant at a subsequent stage of the case, either in the Court of original jurisdiction or appeal, nor shall the question of inferior valuation of the property sued for be triable by the appellate court, except upon summary or regular appeal from the order of the inferior court on that particular point, when the appellate tribunal shall proceed agreeably to Clause 2, Section 7, Regulation 26, 1811, should no fraudulent intention be apparent.—*Ibid.*, *par.* 3.

Stage at which the objection of the defendant to the plaintiff's valuation is to be urged

## SECTION VI.

### *Plaints in the Zillah Court*

171. The Court having reason to think that, in some courts, it is customary, in the enumeration of regular suits and miscellaneous cases, to maintain one consecutive series of numbers, a practice which is as inconvenient as it is useless, whereas an annual series is obviously more suitable and equally efficient for all purposes of record and reference; I am directed, therefore, to request that, if the objectionable practice adverted to should have hitherto obtained

Manner in which regular suits and miscellaneous cases are to be enumerated

in your jurisdiction, you will discontinue it, and commence a new series of numbers with the commencement of each successive year, introducing this plan at once, and making it applicable to all suits and miscellaneous cases which may have been brought upon your files and those of the subordinate courts since the 1st instant, or which may be hereafter instituted.—*Cir. Ord* 18th Jan. 1811, *par.* 1.

Idem

172. You are requested to forward a correct translation of this Circular to all the courts subject to your control.—*Ibid.* *par.* 2.

Only plaintiffs or defendants, or their vakeels duly empowered to be allowed to prefer or defend a suit. No other persons, excepting the witnesses of the parties, to be heard *viva voce* in a cause.

173. No complaint is to be received but from the plaintiff, nor any answer to a complaint, but from the defendant, or their respective vakeels duly empowered. Nor is any person to be permitted to do any act, or to be heard *viva voce* in any stage of a cause, excepting the plaintiff or defendant, or their vakeels or witnesses.—*Reg.* 1, 1793, *Sect.* 2 [*This enactment was modified by Act XII. 1833, which allows parties to employ agents.*]

Petition of plaintiff may be received from any authorized agent, or any duly empowered vakeel.

174. The Court having reason to believe that the provisions of Clause 3, Section 18, Regulation 5, 1831, and Regulation 12, 1833, have not been duly carried into effect, and that delay consequently takes place in the courts of the Principal Sudder Ameen and Sudder Ameen in the disposal of the causes pending before those functionaries, direct me to inform you, that petitions of plaintiff may be received by you agreeably to Section 2, Regulation 1, 1793, from any authorized agent, or from any duly empowered vakeel attached to the court of the Judge, the Principal Sudder Ameen, or the Sudder Ameen, and that, in order to expedite business, the Judge should encourage such petitions of plaintiff being filed by the vakeels of that court to which under the provisions of Regulation 5, 1831, and Act XXV. 1837, they will ordinarily be transferred for trial.—*Cir. Ord.* 18th Dec. 1810

A managing gomastah may institute and defend suits connected with the kootee which he represents.

175. A question having been agitated by the acting Judge of the city of Moorshedabad through the Court of appeal respecting the application of this rule to the gomastahs of banking houses, the Court, in a letter dated the 31st January, 1811, gave it as their opinion, that a managing gomastah, under the general and known powers vested in him, might institute and defend suits, and carry on all concerns connected with the kootee of which he was the ostensible representative, without producing any authority from his principals for so doing.—*Con.* 77, 31st Jan. 1811

What a complaint preferred to a zillah or city court is to contain.

Complaint to specify the name of the defendant and when it arose, and to be signed by the party, or his vakeel, Judge to sign, number, and date the complaint.

Complaint to be entered in a book by a native officer

176. Every complaint that may be presented to the Court of dewanny adawlut of any zillah, or of either of the cities of Patna, Dacca, or Moorshedabad, is to state precisely the matter of complaint [*and the value of the thing sued for, as ordained in the next section*]. The complaint is also to specify the name of the person complained against, the time when the cause of action arose, and is to be signed by the complainant, or his vakeel duly authorized. The complaint is to be signed and numbered, and dated in the order in which it may be received, by the Judge of the court and is to be registered in a book by a Native officer of the court, whose particular duty it is to be made to copy and register complaints.—*Reg.* 1, 1793, *Sect.* 3.

A Judge may point out to a party, the proper mode to be followed by him in his suit

177. The Court are of opinion that there can be no objection to a Judge pointing out officially to a party in a suit the proper mode to be followed by him when he sees occasion to do so.—*Con.* 705, 20th July 1832.

178. Property claimed under separate deeds, must be separately sued for.—*Rep. Sum. Cases, 31st Jan. 1842, p. 23.*

Property claimed under separate deeds to be separately sued for.

179. In a suit for recovery of various portions of land from which the plaintiff alleged that he had been dispossessed at different times, but did not specify particulars, the Sudder dewanny adawlut held that he was rightly nonsuited.—*Rep. Sum. Cases, 14th March 1842, p. 25.*

In a suit for recovering various portions of land, failure to specify particulars was deemed a cause of nonsuit.

180. A plaintiff cannot be prevented from withdrawing his suit.—*Rep. Sum. Cases, 10th Dec. 1841, p. 62.*

A plaintiff may withdraw his suit.

181. A plaintiff was nonsuited for making a deceased person a co-defendant.—*Rep. Sum. Cases, 24th March 1846, p. 80.*

Making a deceased person a co-defendant is a cause of nonsuit.

182. The error of making a deceased person a defendant, can be corrected on the motion of the plaintiff.—*Rep. Sum. Cases, 21st Sept. 1847.*

But the error may be corrected by the plaintiff.

183. The omission to specify by name one of the defendants in a civil suit, who was otherwise adequately described, was held to be an insufficient ground of nonsuit.—*Rep. Sum. Cases, 18th Aug. 1846, p. 82.*

The omission to specify one of the defendants by name who was otherwise adequately described, no ground of nonsuit.

184. It is hereby enacted, that so much of Section 3. Regulation 4. 1793, and of the corresponding part of Section 3. Regulation 3. 1803, of the Bengal code, as requires the transcription of plaints, be repealed.—*Act XII. 1847.*

Part of reg. 4. 1793, see amended. The transcription of plaints unnecessary.

## SECTION VII.

### *Zillah and City Courts - Notice to Defendants in Civil Suits—Ex-parte Decisions.*

185. Upon the institution of a civil suit in the mode prescribed by the Regulations, in any Zillah or City court, the general first process against the defendant, instead of the summons and requisition of security for appearance prescribed by Section 5, Regulation 4. 1793, and Section 5, Regulation 3, 1803, shall be a notice only containing a short statement of the demand, with the requisition to attend in person or by vakeel, and to deliver an answer to the plaint, on or before a certain day, to be specified in the notice.—*Reg. 2. 1806, Sect. 2. Cl. 1.*

The general first process to be issued by the civil courts, instead of the summons and requisition of security prescribed by sec. 5, reg. 4, 1793, and sec. 5, reg. 3, 1803, shall be a notice only. What the notice shall contain.

186. If the defendant have an accredited agent at the place where the court is held expressly empowered, either by a clause in his general moaktarnamah, or by a separate moaktarnamah granted for that purpose, to receive on behalf of his constituent notices or other judicial processes, which may not be specially ordered to be served personally, by an officer of the court; the notice to be issued under the preceding clause, shall be tendered to such agent, to be communicated by him to his principal; and the agent's acknowledgment, to be endorsed upon it, shall be accepted as a sufficient service of it; if he be desirous of giving such acknowledgment in preference to the notice being served on the person of his principal by an officer of the court.—*Ibid. Cl. 2.*

How the notice is to be served, if the defendant have an accredited agent residing at the place where the court is held, to receive such notices or other judicial processes.

Notice to be tendered to such agent, and his acknowledgment, endorsed on it, shall be accepted as a sufficient service of it.

Admission or rejection of general mooktars.

187. Section 2, Regulation 2, 1806, recognizes the admission of general mooktars ; but the Court observe that in admitting or rejecting this description of agent, much must of course be left to the discretion of the local authority, according to the particular circumstances of each case.—*Con.* 512, 17th July 1829.

How the notice is to be served in other cases to be served.

To be served by a single peon or chuprassy who shall require only the endorsement of its receipt by the defendant, or, if he be absent, the acknowledgment of his principal agent or person acting for him.

How the notice is to be served if the defendant be resident in another jurisdiction.

Or, if the defendant be neither within such jurisdiction nor within that of any other Zillah or City court, and the suit be cognizable notwithstanding from the property, as if immovable being situated in such jurisdiction, or from the cause of action having arisen therein, or in the former case, the notice to be served upon the agent in charge of such property, and in the latter, in such manner as the Judge may deem most proper and convenient.

Count how to proceed against a defendant to whom notice may have been issued, who shall abscond, or cannot be found, or acts so that the notice cannot be served on him.

Proclamation to be issued, and what it shall contain.

Cases in which the Court is to proceed *ex-parte* on the allegations and the defence of the plaintiff only.

188. If the defendant shall not have an accredited agent at the place, where the court is held, or if he shall not have expressly authorized his agent to receive notices of the above description, or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the jurisdiction of the court, it shall be served on him through the Nazir of the court, by a single chuprassy or peon ; who shall require only the acknowledgment of the defendant to be endorsed upon it, or if he be absent from his usual place of residence, the acknowledgment of his principal agent, or of any person acting for him during his absence. If the defendant be resident within the jurisdiction of any other Zillah or City court than that in which the suit may have been instituted, the notice shall be transmitted to the Judge of the Zillah or city in which the defendant may reside, to be served in the manner above directed. If the defendant be neither resident within the jurisdiction of the Zillah or City court in which the suit may be instituted or of any other Zillah or City court, and the suit shall notwithstanding be cognizable either in claims to landed or other immovable property, from the property claimed being situated within the jurisdiction of the court, or in other cases from the cause of action having arisen within its jurisdiction, the notice if the suit be for land or other immovable property, shall be served upon the defendant's agent or representative in charge of such property, and in other suits, the Judge shall cause notice of the claim to be conveyed to the defendant, in such manner as may appear most certain and convenient according to the circumstances of the case. — *Reg.* 2, 1806. *Sect.* 2, *Cl.* 3.

189. If a defendant to whom a notice may have been issued, as directed in the preceding section, shall abscond or is not after diligent search to be found, or shall shut himself up in any house or building, or retire to any place so that the notice cannot be served upon him, the Judge (or the Register in cases referred to him,) on receiving the Nazir's return to this effect shall issue a proclamation, as directed in similar cases when a summons cannot be served upon a defendant, by Section 11, Regulation 1793, and Section 13, Regulation 3, 1803. If the defendant shall not appear in person or by vakeel, by the time limited in such proclamation or if a defendant, who may have been served with a notice, as directed on the preceding section, shall not appear in person or by vakeel, within the time specified, or if, having appeared, he shall refuse to answer the plaint, or make other default, the Court, as provided in the sections above-mentioned, shall proceed to try the cause *ex-parte*, and after examining the plaintiff's evidence in support of his claim, shall give judgment, in the same manner as if the defendant had appeared, answered, and entered into proof.—*Ibid.* *Sect.* 3.

Cases in which the Court is to give judgment on the allegations only.

190. If the defendant shall not appear at the time limited in the notice, or if a defendant who may have been served with a summons shall not appear, or, having appear-

ed. shall refuse to give answer, or make other default, or shall admit the truth of the plaintiff's bill of complaint, the court, on examining the allegations of the plaintiff only, and the depositions of his witnesses, is to decree and give judgment, in the same manner as if the defendant had appeared, answered, and entered into proof.—*Reg. 4. 1793, Sect. 11.*

191. The Court are not prepared to adopt to its full extent the principle laid down in your letter to the address of Mr Turquand, dated the 13th ultimo, namely, that "a defendant in a regular civil suit is entitled to file his answer to the plaint at any stage of the trial antecedent to final decision, although the enquiry may have been commenced *ex-parte*." On the contrary, under a strict construction of the rule contained in Section 3, Regulation 2, 1806, the cause should be proceeded on *ex-parte*, notwithstanding the defendant's subsequent appearance, if he do not appear, either in person or by vakeel, within the time limited in the proclamation prescribed by Section 11, Regulation 4, 1793. The Court, however, are of opinion, that consistently with the spirit of the rule above quoted, whenever a defendant appears, at any time antecedent to the decision of the suit, and assigns satisfactory reasons, to show that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *ex-parte* investigation; and to adduce evidence in support of it, if the merits of the case appear to require it.—*Con. 375, 4th Feb 1825.*

If a defendant appears at any time before the decision of the suit, and satisfactorily accounts for the delay, he may file his answer, though the *ex-parte* investigation has begun.

192. Held by the Sudder dewanny adawlut that the decision of lower court cannot be considered imperfect merely because the case was heard *ex-parte*; the defendant having received the usual notice, but neglected to defend the action.—*S. D. A. Sel. Rep. 5th July 1836, vol. 6, p. 76.*

Decisions of the lower court not imperfect, because the case was tried *ex-parte*

193. The defendant having failed to appear in the Court of original jurisdiction, and having shewn no good reason for the default, the court would not entertain his appeal or enter into his objections to the claim.—*S. D. A. Sel. Rep. 6th June 1840, vol. 6, p. 285.*

Where the defendant did not appear originally or satisfactorily account for his default, his appeal cannot be received

194. A., having sold a house at Mynpooree to B., locked it up, and went to a foreign country leaving property in a room, the key of which he left with C. Some time after his departure, B., concluding that he was either dead or would not return, took the key from C. and gave it to the cotwal, who opened the door, took an inventory of the property, and sent it to the Magistrate, and B. instituted a suit to recover the amount of his debt from the property. The Judge, doubting whether he could entertain the suit against the property when no defendant was forthcoming, referred the question to the Sudder dewanny adawlut, who held that as the cause of action arose within the court's jurisdiction, and property was forthcoming, the case was cognizable, and should be proceeded on in the manner laid down in Sections 2 and 3, Regulation 2, 1806.—*Con. 854, West. C. 10th, Cal. C. 31st Jan. 1834.*

If there be no defendant to be sued, but property belonging to him is forthcoming, the case is cognizable

195. On a reference from the Judge of Chittagong, as to whether a suit could be carried on against a party who had proceeded to England, it was held that a case cannot be tried *ex-parte*, when it is known that the usual notice has not, and cannot be served on the defendant.—*Con. 1343, Cal. C. 20th May, West. C. 17th June 1842.*

A suit cannot be proceeded with against a deft. who has left the country, and on whom notice cannot be served

196. The issue of notice to heirs of defendant or respondent, deceased, to attend, and not proof of their heirship, is required from the opposite party.—*Rep. Sum. Cases, 2d June 1845, p. 69.*

Notice to be given to heirs of deceased defendant to attend.

## SECTION VIII.

*Exemption from Arrest under Civil Process.*

Party in attendance on a crim. court on bail not liable to arrest under civil process.

197. The Court concur in the opinion that a party being in attendance on a Criminal court on bail to answer to a criminal charge is not liable to arrest under civil process.—*Con. 885, 23d May 1834.*

Nor can one in attendance on a collector to defend a suit, be thus liable to arrest.

198. I am directed by the Court to inform you that they are of opinion that a person being in attendance on a Collector to defend a suit or claim pending before that officer is protected from arrest under civil process, in like manner as persons in attendance on a Magistrate to answer a criminal charge; and that in either case the protection will last only as long as the party is in actual attendance or coming to or returning from the court.—*Con. 893, West. C. 4th July, Cal C. 1st Aug. 1834.*

Parties whether prosecutors, defendants or witnesses in any case before any court are exempt from arrest under civil process.

199. In continuation of Circular order, dated 1st April, 1840, No. 16, I am directed by the Sudder Board of Revenue to communicate for the information and guidance of the several revenue authorities in your division, that it has been held by the Courts of Sudder dewanny and Nizamut adawlut that parties, whether prosecutors or defendants, and witnesses, in any case before any Court of justice, are exempt from arrest under civil process while in attendance on, or going to, or returning from such court.—*Co. Ord. S. B. R. 18th May 1842.*

## SECTION IX

*Zillah and City Courts—Security for the Defendant's Appearance, and for Costs*

Defendant after receiving the notice & attending in person or by vakeel to be allowed to defend the suit to its termination, without being called upon for security, unless it appear to the court requisite.

How the court is to proceed, if it appear on sufficient evidence that the defendant intends to abscond.

Process to be issued in such cases requiring security under specific penalties.

200. If a defendant, after receiving the notice prescribed in Section 2, shall attend in person or by vakeel, and deliver his answer to the plaint and no reason shall subsequently appear to the court for requiring security for his appearance, during the trial of the suit he shall be allowed to defend the cause, to its determination, without being called upon for such security. But if the Judge (or Register) shall be satisfied, by sufficient proof that there is reason to believe the defendant intends to abscond, and withdraw himself from the jurisdiction of the court, he may either on the institution of the suit, or at any time whilst the suit is depending in the Zillah or City court, issue process against the defendant requiring him to give security for his appearance, as prescribed on the issue of summonses, by Section 5, Regulation 4, 1793, and Section 5, Regulation 3, 1803; under penalty of being committed to close custody until such security be given, or the decree of the court be complied with, as provided in the abovementioned sections, or until an attachment of property shall have taken place, to secure the execution of the ultimate judgment in the cause under the provision made by the following section of this Regulation. The security bond to be executed in such instances, shall in substance correspond with that prescribed by Section 3, Regulation 11, 1797, and Section 20, Regulation 3, 1803; and in fixing the extent of the security to be required, the Judge (or Register

Security bond to correspond with that prescribed in the regulations herein quoted, and in fixing the extent of the security the judge or register is authorized to exercise the discre-

authorized to exercise the discretion vested in him by Section 2, Regulation 3, 1802 ; and Section 8, Regulation 14, 1803.—*Reg. 2, 1806, Sect. 4.*

tion allowed under the regulations herein specified.

201. Regulation 2, 1806, Section 4, invests Judges with the power to commit to close custody defendants intending to abscond, or withdraw themselves from the jurisdiction of the court in default of furnishing security, but does not specify what course is to be pursued if the defendant shall have actually withdrawn himself from the jurisdiction of one zillah Judge to that of another.—In reply, I am directed to observe, that as the defendant was not within the limits of the district in which the suit against him was instituted, at the time the process issued under Section 4, Regulation 2, 1806, was served upon him, the rule contained in that section does not apply ; and consequently that if he has been arrested by the court into whose jurisdiction he has removed, he must be released : leaving the court in which the suit was instituted to decide *in ex-parte*, if he fail to appear and defend it.—*Con. 888, Cal. C. 1th, West. C. 25th July 1834.*

A defendant not being within the district in which the suit was instituted, cannot be arrested in default of security under reg. 2, 1806, sec. 4.

202 The section already quoted [Section 4, Regulation 2, 1806,] appears, from the wording of it ("if satisfied," "he may," &c) to leave the demand of security entirely to the discretion of the Judge presiding in the court in which the cause is pending, and to preclude the right of appeal from his order ; and, from the circumstance of that right being specially provided for in cases falling under Section 11 of the same Regulation, it may be inferred that it was the intention of the framers of the Regulation to restrict it to the latter section.—Held by the Calcutta Court, under date the 13th June 1835, that the order of the late Judge, Mr. Moore, refusing to take security from the defendant in the case of Mr. Donovan *versus* the Reverend Fre Paul Gradoly, was open to appeal to this court.—*Con. 963, Cal. C. 26th June, West. C. 31st July 1835.*

The order of a J. refusing to take security from a defendant who is said to be about to abscond, may be appealed to the S. D. A.

203 The following form of security bond, or an instrument to the following effect, is to be hereafter executed by the sureties for the appearance of defendants in the Zillah and City courts required by Section 5, Regulation 4, 1793 :—Whereas a suit has been instituted in the Dewanny adawlut of the zillah (or city) of----- by ----- plaintiff against ----- defendant ; and whereas I ----- inhabitant of ----- have voluntarily become security for the appearance of the said defendant to answer to the above suit, and perform all such orders as may be passed thereupon, until the final decree on it shall have been carried into execution, I do therefore hereby engage and bind myself, my heirs and successors, that the said defendant shall appear in person, or by vakeel, to make answer to the plaint against him in the suit aforesaid on the ----- being the day on which his appearance has been required in the said Zillah (or City) court ; and further that the said defendant shall personally attend at the said Zillah (or City) court whenever the same may be required by the Judge thereof, at any time whilst the above suit is depending before the Zillah court, or Provincial court of appeal, or Court of Sudder dewanny adawlut ; or before the final decree which may be passed thereupon by the above courts respectively, shall be fully and completely carried into execution ; in default of which and in the event of my not producing the said defendant when called upon, I will be answerable for such sum as may be adjudged against him, and

Form of security bond to be executed by the sureties for defendants required by sec. 5, reg. 4, 1793.



for the performance of whatever order or decree may be passed against him on the suit abovementioned.—*Reg. 11, 1797, Sect. 3, Cl. 1.*

The Zillah and city judges authorized to exercise their discretion with respect to security for the appearance of defendants in the first instance, &c.

204. In all cases of suits preferred in the Zillah or City courts, whether by paupers or by others, the Judge before whom the suit may be instituted, is authorized to fix the extent of the security to be required for the appearance of the defendant in conformity to Section 5, Regulation 4, 1793, (extended to Benares by Regulation 8, 1795,) and for which a form of bond is prescribed in Section 3, Regulation 11, 1797, viz. the Judge shall exercise his discretion with respect to the responsibility of the surety or sureties to be found by the defendant for his personal attendance when required, as specified in the above Regulations; and in the first instance, whatever may be the claim of the plaintiff, shall demand from the defendant such security only as may appear necessary to secure his appearance during the trial of the suit. Provided, that if at any time in the course of the trial the security so taken from the defendant shall appear to the Judge insufficient, he is authorized and required to take such further security as he may think necessary to secure the appearance of the defendant.—*Reg. 3, 1802, Sect. 2.*

The Judge may require further security, if in the course of the trial the security so taken shall appear insufficient.

Sureties for defendants not appearing, or refusing to give answer, liable to be proceeded against as principals.

Option given to the plaintiff to prosecute the surety, or to proceed against the defendant as herein directed.

205. If a defendant, for whose appearance security may have been taken, shall not appear, or having appeared, shall refuse to give answer, the plaintiff is permitted to institute a suit against the sureties on their engagement, and is to be entitled to recover from them whatever he may prove to be due to him from the defendant, or he may proceed against the defendant in the same manner as defendants are directed to be proceeded against who have been served with a summons and have not appeared, or have refused to give answer.—*Reg. 4, 1793, Sect. 12.*

Exception to the rule made in favor of defendants; who may be women of the description herein specified.

How such women are to be summoned when defendants.

206. In every case in which the defendant shall be a Hindoo or Mahomedan woman of a rank or quality, which, according to the customs and usages of the country, would render it improper to compel her to appear in an open Court of justice, the Judges of the Zillah and City courts are not to issue any compulsory process against her, to compel her to appear and make answer, but are to issue a summons requiring her to appear in person or by vakeel, at a certain time to be named in the summons, in the Zillah or City court and answer to the complaint, and abide by the orders which the court may think proper to pass in the cause.—*Ibid, Sect. 13.*

Guardians when parties in civil suits with their wards, exempted from giving securities.

207. In cases in which a guardian may be a party jointly with his ward, under Clause first Section 32, Regulation 10, 1793, in any civil suit, the securities required by the Regulations to be taken from parties in suits, shall not be demanded from the guardian.—*Reg. 55, 1795, Sect. 2.*

A debtor confined for not giving security may have the benefit of the insolvent rules.

208. A debtor confined in consequence of inability to give security under Section 4, Regulation 2, 1800, may, after decree passed, and before execution taken out, be admitted to the benefit of the insolvent rules.—*Rep. Sum. Cases, 20th Jan. 1810, p. 30.*

Security given on other grounds no bar to the demand of security under reg. 2, 1806, sec. 4.

209. Security for the discharge of a trust, or for payment of a debt, given directly to the employer, or creditor, is no bar to the demand of security under Regulation 2, 1806.—*Rep. Sum. Cases, 10th Jan. 1843, p. 45.*

210. Process of arrest under Section 4, Regulation 2, 1806, taken out against a person when within the jurisdiction of the court issuing it, may be served on him beyond it.—*Rep. Sum. Cases*, 21st April 1845, p. 67.

Process of arrest under Reg. 2, 1806, taken out against one residing in the jurisdiction of the court issuing it, may be served on him beyond it.

211. An answer filed by the *vakeel* of a defendant in a suit, himself absconding or not furnishing security under Regulation 2, 1806, is not to be attended to.—*Rep. Sum. Cases*, 5th May 1845, p. 68.

An answer filed by the *vakeel* of a defendant absconding, or not giving security, not to be attended to.

212. Residents of foreign territories, instituting or defending suits in the Company's courts, must find security for costs, although they hold land, or other property, within the limits of the British territories.—*Con.* 1355, *West. C.* 5th, *Cal. C.* 26th Aug. 1842.

Residents in foreign territories instituting or defending suits, must give security for costs.

## SECTION X.

### *Zillah and City Courts—Security from Defendant for the execution of the Decree—Attachment of his Property.*

213. In any case if the Judge (or the Register in cases referred to him) be satisfied by sufficient proof, that there is ground to apprehend the defendant means to dispose of the property in his possession by any private transfer; or to cause the public sale of any disputed land, by withholding the assessment upon it, or to remove any personal property from the jurisdiction of the court, whilst the suit against him is depending; for the purpose of avoiding the execution of an eventual judgment against him, the Judge (or Register) is authorized to call upon the defendant for malzanny security, in such sum as may appear sufficient to make good the ultimate judgment of the court; and in the event of such security not being given (within a reasonable time to be allowed for that purpose) to cause the attachment of any land, effects, or other property belonging to, or possessed by, the defendant, to the amount or value of the cause of action in the suit depending: or the attachment of which may be deemed necessary to secure the execution of the judgment to be passed in the cause.—*Reg. 2, 1806, Sect. 5, Cl. 1.*

Malzanny security to be required in cases where such may appear to the Judge or Register on sufficient proof that the defendant means to dispose of the property or land in dispute, by private transfer or public sale, or in any of the modes herein specified.

If the security be not furnished within a reasonable time, any land, property or effects in the possession of the defendant, to the amount or value of the cause of action, to be attached.

214. Attachment of property, to secure the execution of eventual judgment, on other ground than those set forth in clause 1, Section 5, Regulation 2, 1806, is illegal.—*Rep. Sum. Cases*, 27th Sept. 1847.

Grounds of attachment of property under Reg. 2, 1806, see Cl. 1.

215. The Court of Sudder dewanny adawlut promulgate the subjoined resolution for the guidance of the civil authorities in the lower provinces and information of all parties interested. With reference to the provisions of Act XIX. of 1843, and with the view to obviate the disputes which not unfrequently arise owing to the alleged alienation of property pledged as security in civil cases, the Court resolve:—That all security bonds, for whatever purpose the security may be required, whether for costs of respondent in appeals to the Queen in Council, or under the terms of Clause 1, Section 5, Regulation 2 of 1806, or any other law or authoritative order, shall be duly registered according to the rules now in force or which may be hereafter enjoined, and that the registration of such bonds shall be deemed indispensable to their acceptance

Security bonds, under Reg. 2, 1806, sec. 5, cl. 1, shall be duly registered, otherwise they will not be considered valid.

as good and valid securities. Ordered, that this resolution be communicated to the civil authorities in the lower provinces for their information, and that a translation thereof be suspended in the court-house for a period of one month for general information.—*Civ. Ord. 17th July 1846.*

There must be a reasonable time for procuring security before the property can be legally attached.

An attachment before the time fixed for giving security, illegal.

Without proof of an intention to alienate, and a refusal or neglect, to give security, an attachment is illegal.

The judge must not attach property without proof that malzanny is necessary, & until the defendant has neglected to furnish it.

If a defendant descond or shod himself, he is to avoid service of the process against him, his property may be attached to secure execution of the decree.

The property of a European defendant is liable to attachment in like manner, as the property of any other person subject to the jurisdiction of the court, upon the court's being satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond, and withdraw himself or remove his property, the detention of which is necessary to the satisfaction of eventual judgment.—*Con. 558, 8th April 1831, par. 2*

The attachment of the property on the mere oath of the plaintiff premature.

A collector receives the orders of the civil court under reg. 2, 1806, see 5, cannot refuse to attach the surplus proceeds of a sale for arrears in deposit.

The profits of a

216. A reasonable time must be allowed for procuring the requisite security under the provisions of Clause 1, Section 5, Regulation 2, 1806, before the property of the defendant can be legally attached.—*Rep. Sum. Cases, 21st Nov. 1834, p. 2.*

217. An attachment made (under the provisions of Clause 1, Section 5, Regulation 2 of 1806,) previous to the expiration of the period fixed by the court for furnishing security, held to be illegal.—*Ibid, p. 1*

218. Proof of intention to alienate and of a refusal or neglect to give security is requisite before a Zillah court can attach the property of a defendant under Section 5, Regulation 2 of 1806, see Construction 190.—*Rep. Sum. Cases, 31st Aug. 1841, p. 16.*

219. The Court entirely concur with you in opinion, that in the case in question, it was clearly the duty of the Judge of Mymensing under Clause first, Section 5, Regulation 2, 1806, not to have proceeded to the attachment of the defendant's land till he had satisfied himself by proof that sufficient grounds as set forth in the abovementioned clause, for requiring malzanny security from the defendant, did actually exist; and until the defendant had failed to furnish such security within a reasonable time, to be allowed for that purpose.—*Con. 190, 14th Dec. 1841*

220. I am directed by the Court to acknowledge the receipt of your letter of the 13th instant, and in reply to the first question put by you, to refer you to Section 5, Regulation 2, 1806, which expressly authorizes the attachment of the property of the defendant to secure the execution of the ultimate judgment, where sufficient security is not given, and with reference to the second question, to state that a mere entry into the compound does not authorize the officer in charge of a process to break open an outer door, in order to serve it.—*Con. 745, 21st Dec. 1832*

221. The property of an European defendant is liable to attachment in a suit legally instituted, in like manner, as the property of any other person subject to the jurisdiction of the court, upon the court's being satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond, and withdraw himself or remove his property, the detention of which is necessary to the satisfaction of eventual judgment.—*Con. 558, 8th April 1831, par. 2*

222. The attachment of the property of the defendant, in the case noticed in the letter from the Judge of Chittagong, on the mere oath of the plaintiff, appears to have been premature and the process of attachment, as exhibited in the Judge's letter, at variance with the provisions of Clause 2, Section 5, Regulation 2, 1806.—*Ibid, par. 3.*

223. Held that Section 21, Act XII. 1841, does not authorize a Collector in refusing to attach the surplus proceeds of a sale for arrears of revenue in deposit in his office, in obedience to the orders of the Civil court passed under Section 5, Regulation 2, 1806.—*Rep. Sum. Cases, 18th April 1842, p. 28*

224. There is no legal bar to the attachment, under Regulation 2 of 1806, of the profits

of a jaghire, to meet the eventual judgment in an action for debt.—*Rep. Sum. Cases*, 5th Nov. 1834, p. 1. jaghire may thus be attached.

225. Promissory notes may be attached, under Section 5, Regulation 2, 1806, when found in the name of the defendant in the action, or endorsed to him or her.—*Rep. Sum. Cases*, 24th Feb. 1846, p. 76. Promissory notes may be thus attached.

226. A. obtained a decree against four defendants. B. obtained a decree against three of them. The property of all four was sold in execution of both decrees. The fourth sued to set aside the sale on the ground that he was not a party to the suit of B., and other grounds; and obtained a judgment in his favor. Held that this judgment did not in any way affect an attachment under Section 5, Regulation 2, 1806, taken out by A. while his suit was pending against the property of the fourth.—*Rep. Sum. Cases*, 6th July 1817. An attachment taken out under that reg. not affected by a judgment to set aside a sale of property.

Until the proclamation of attachment has been issued in conformity with the above rule, the defendant may legally alienate his property.—*Con.* 388, 8th April 1831, par. 1. Property may be legally alienated till the proclamation of attachment has issued.

228. Plaintiff held money decrees against one Nurunjon Sing. and took out execution against his property, which was attached. The defendant pleaded a private sale to himself. Sale was stopped, and the plaintiff referred to a regular suit to prove the liability of the property for the debts of Nurunjon Sing. This suit was brought accordingly, and decided in favor of the plaintiff by the Principal Sudder Ameen, who found that the sale was a fictitious transaction to defeat the claims of the plaintiff. The Court, for the same reasons, confirmed the decree of the lower court, notwithstanding the attachment under Regulation 2, 1806, which had been applied for, had not been actually issued.—*S. D. A. Sel. Rep.* 8th Jan. 1811, vol. 7, p. 117. Where attachment under reg. 2, 1806, sec. 5, had been applied for, but not issued it was not held to bar the sale of property.

229. Real property had been bought from a person who was a judgment debtor, after date of judgment. The question was, whether the sale, under such circumstances, was legal? The court, as there was no attachment of the property at the time, decreed its legality.—*S. D. A. Sel. Rep.* 27th March 1814, vol. 7, p. 157. Where there was no attachment of property at the time, the sale of it was deemed legal.

230. Construction 583, (para. 1,) which rules that a defendant may legally alienate his property prior to proclamation of attachment under Clause 2, Section 5, Regulation 2, 1806, held to be applicable only to *bonâ fide* sales.—*Remarks*.—A case of fictitious sale, prior to the issue of proclamation of attachment under Regulation 2, 1806, was reversed. See case of Baboo Odyet Nurraim Sing *versus* Juggomohun Doss, decided January 8th, 1811, reported at page 147, volume 7, Sudder dewanny adawlut Reports. The Sudder dewanny adawlut decreed the legality of a *bonâ fide* sale, prior to attachment of property under Regulation 2, 1806. See case of Baboo Odyet Nurraim Sing *versus* Juggomohun Doss, decided January 8th, 1811, reported at page 147, volume 7, Sudder dewanny adawlut Reports.—*S. D. A. Sel. Rep.* 17th Feb. 1845, vol. 7, p. 191. A *bonâ fide* sale, prior to attachment of property under reg. 2, 1806, sec. 5, held to be legal.

231. As the provisions of Section 5, Regulation 2, 1806, do not restrict the power of attachment to property within the district, the Court are of opinion that the Judge may cause the defendant's property to be attached on his inability to give the requisite security, wherever the same may be situated.—*Con.* 665, 6th Jan. 1832. Def't property may be attached on his failing to give the security wherever it may be situated.

232. The order of a zillah Judge releasing surety (who has given security for a defendant) The order of a zil-

ish judge releasing the surety who had given security for default, under reg. 2, 1806, sec. 5, cl. 1, from liability on the dismissal of the suit, does not prevent the execution against the same surety when the decree of the judge is reversed in appeal.

The lien of the decree-holder on property pledged for the eventual judgment not affected by the mortgage and sale of it to another party.

How the attachment in such cases to be made, after which any private alienation of the property in dispute by sale, gift, or otherwise, declared to be illegal and void.

Any authorized removal of the property attached to be punished on proof of resistance of the process of the court, in the manner directed by the existing regulations.

The same process for holding lands in attachment must be pursued in cases under reg. 2, 1806, sec. 5, as where the attachment is made in execution of a decree.

under Clause 1, Section 5, Regulation 2, 1806,) from liability on the dismissal of the suit in the Court of original jurisdiction, does not prevent the execution against the same surety of a decree passed by an appellate court in reversal of the Zillah court's judgment.—*Rep. Sum. Cases*, 9th Dec. 1840, p. 50.

233. Property pledged to satisfy an eventual judgment of a mofussil court, was subsequently mortgaged to another party, sold by the Sheriff of Calcutta in execution of a judgment from the Supreme Court, and possession thereof given under judgment of a Zillah court. Held that the lien of the decree holder, to satisfy whose claim the property was originally given in pledge, is not thereby affected.—*Rep. Sum. Cases*, 12th Sept. 1836, p. 11.

234. The attachment in such cases shall be made by a written order of the court, to be read and proclaimed upon the spot, and to be affixed in some conspicuous situation at the place where the property is situated, after which any private alienation of the property sequestered, whether by sale, gift, or otherwise, during the continuance of the attachment, shall be deemed illegal and void; and any unauthorized removal of the property so attached, during such period, with a view to oppose or evade the sequestration, shall be punishable, on proof, as an act of resistance to the process of the court according to the provisions in force concerning resistance to the process of the Civil courts.—*Reg. 2, 1806, Sect. 5, Cl. 2.*

235. The Circular order of the 17th February, 1816, No. 50, which contains directions as to the method of preserving lands attached for sale in satisfaction of decree from the Sheriff of Calcutta, makes no reference to lands or property attached under Section 5, Regulation 2, 1806, though for obvious reasons the precaution in such cases is equally necessary. This Court (of Dacca) has been moved to attach certain indigo factories and indigo, the property of Mr. E. K. Hume; but unless some precaution of this nature be observed, there can be no difficulty in his obtaining, by some fiction of law, a counter-attachment from the Supreme Court, and then the prosecutors may look in vain to the attached property for the execution of the decree. I request you will bring this letter to the notice of the Court without delay, and I solicit instructions to depute an officer to remain on the spot and hold the property in attachment till countermanded. Under the provisions of the Regulation I do not feel authorized to take this step without authority of the superior Court.—*Reply*—I am directed by the Sudder Court to acknowledge the receipt of your letter of the 8th September last, No. 333, and in reply to the question therein proposed, to inform you that the same course should be pursued in cases of attachment under Section 5, Regulation 2, 1806, as when the attachment is made in execution of a decree, the ulterior object in both cases being the same.—*Con. 916, Cal. C. 21st Nov., West. C. 19th Dec. 1834.*

Where property lying within the limits of another jurisdiction is attached under reg. 2, 1806, sec. 5, the application for the sale of it must be transferred to the judge of the district in which it is situated.

236. The Circular orders of the Subdar dewanny adawlut, Nos. 83 and 167, dated respectively the 8th May, 1840, and 24th September, 1841, direct that applications for the sale of property lying within the limits of another jurisdiction shall be transferred to the Judge of the district, in which the property to be brought to sale is situated, and that all proceedings and incidental investigations consequent thereon, shall be conducted by that officer in the same manner as the Court issuing the process would have done had the property been situated there.

own jurisdiction. The Court of Sudder Dewanny Adawlut, considering that the principle of this rule is equally applicable to processes of attachment, which may be ordered under the provisions of Regulation 2 of 1806, and that the general observance of it in such cases will be productive of convenience to the community and of expedition in the determination of claims, or objections to the sequestration of property, lying within the jurisdiction of a court, other than that ordering the attachment, are pleased to extend its application to all occasions of the nature adverted to and hereby notify such extension accordingly.—*Civ. Ord. 8th Sept. 1843.*

- 237 In suits for landed property of considerable value, wherein it may appear necessary, for the purposes of justice, to divest the defendant from the management of the land until the suit be decided, or malzami security be given, the attachment shall be made through the Collector of the district in which the land is situated; as prescribed by Section 6, Regulation 5, 1798, and by clause ninth of Section 12, Regulation 4, 1803. In appealed cases, wherein neither the appellant nor respondent may be able to give security for staying execution of the decree. But in other cases the attachments, which may be ordered under the present rule, shall not, without special cause, to be recorded on the proceedings of the court, remove the defendant or his representative from the possession and management of the land, or other property attached until a decision be passed in the cause before the Zillah or City court, nor be understood to preclude any act of the defendant or his representative relative to such property, which may be consistent with the object of the attachment. *Reg. 2 1806, Sect. 5 Cl. 2*

Attachment in the mode directed by the regus herein quoted to be made through the collector, in suits for landed property of considerable value if necessary until the suit be decided or malzami security be given

In all other cases the attachments made under this rule, shall not without special cause, remove the defendant or his representative from the possession and management of the lands attached

Not preclude any act of the defendant or his representative consistent with the object of the attachment

- 238 In a case in which a Principal Sudder Ameen ordered the attachment of a share in certain shops and mercantile establishments under Section 5, Regulation 2, 1806, he was instructed to limit himself to the issue of notices forbidding the alienation of the share.—*Rep. Sum. Cases 25th May 1847*

In a case of attachment of a share in certain shops and mercantile establishments under reg. 2, 1806 see 3, the P. S. A. was directed only to issue notices for bidding the alienation of the share

- 239 Upon the decision of the suit the Judge (or Register) shall pass such further order relative to the property attached as may be just and conformable with the judgment given in the cause. If the decree be against the defendant all right and interest possessed by him in the property attached (saving arrears of rent or revenue due from land and any other *banda* title claims which may be entitled to satisfaction in preference to the decree) shall be held answerable for the execution of the judgment, in the mode prescribed by the Regulations. But if the plaintiff's claim be dismissed, or be not in any considerable proportion established against the defendant, all expence and loss to the defendant, which may arise from the attachment of his property in consequence of such claim, shall be reimbursed to him by the plaintiff as part of the costs of suit.—*Reg. 2, 1806, Sect. 5, Cl. 3.*

How the judge or register is to proceed with regard to the property attached, after the decision of the suit

Provision if the plaintiff's claim be dismissed, or not in any considerable proportion established against the defendant

240. Whenever any property may be attached by order of a Zillah or City court, under the provisions contained in the foregoing section, the trial of the cause shall be proceeded on, and brought to a conclusion, as speedily as possible without regard to the order of time, with respect to other depending causes in which it may have been instituted

Cases in which an attachment of proper property may have taken place to be tried and determined as speedily as possible without regard to their time

ber on the file of depending causes.

Attachment to be taken off at any time previous to the decision of the cause, if sufficient malzaminny security be tendered.

From notes or other obligations of govt or any other sufficient money security, to be accepted, instead of hazrazaminny or malzaminny, when either of those securities may be demandable, from a party in any civil suit or appeal.

Such securities to be kept by the treasurer of the court after the termination of the suit, or when ever the purpose of the deposit shall have been attained.

The attachment shall also be taken off on the delivery of sufficient malzaminny security, at any time previous to the decision of the cause in the Zillah or City court.—*Ibid*, Sect. 6.

241. When personal bail or security for money or other property, may be demandable from a party in any original civil suit, or appeal and he shall tender a deposit of money or promissory notes, or other obligations of Government or any other sufficient money security, to the amount required, such deposit shall be accepted instead of hazrazaminny or malzaminny securities, and shall be carefully kept by the treasurer of the court to be restored or disposed of as the court may direct on the termination of the cause or whenever the purpose, for which the deposit is made, shall have been accomplished.—*Ibid* Sect. 8.

## SECTION XI

### *Zillah and City Courts - General Rules of Attachment of Lands by order of the Civil Courts*

Rules for the issue of precept for holding estates under attachment and for appointing managers.

242 Whenever the Zillah and City courts may deem it just and proper under the provisions of the several Regulations abovementioned to provide for the administration or management of landed property, the court shall issue a precept to the Collector of land revenue of the district wherein the estate may be situated, directing him to hold the estate in attachment, and to appoint a person for the due care and management of the estate under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof, provided, however, that if any person holding an interest in the estate shall be dissatisfied with the selection made by the Collector of the individual to perform the duty in question, or with the conduct of the manager at any time after his appointment it shall be competent to such person to represent his objections to the Board of Revenue, and the board will either confirm the manager chosen, or order the Collector to appoint another person as on consideration of the circumstances of the case may appear reasonable and proper. —*Reg. 5 1827, Sect. 3.*

The precept shall specially state the property to be included in the attachment.

243 The precept of the Zillah or City court abovementioned shall state specially the property to be included in the attachment, and the attachment shall not be withdrawn without a further precept from the court to that effect.—*Ibid*, Sect. 4

The attachment must not be made by the judge through an ameen, but by an order to the collector.

244 The Presidency Court concur in the opinion expressed by the Western Court that the zillah Judge was competent, under the circumstances stated, to attach the lands in question, but with reference to the intent and spirit of Regulation 5, 1827, as expressed in the preamble, that "it is expedient in all cases of attachment of landed property under orders of the Courts of justice, that the management of the estate attached should be placed under the superintendence of the Collectors of land revenue," they do not concur with them in thinking that the Judge ought himself to have made the attachment through an ameen, but that it was

incumbent upon him to issue the orders he did to the Collector; the attachment having been induced by a private adjustment between the parties, not making any difference in the course he was legally bound to pursue towards effecting it.—*Con. 752, 1st Feb. 1833.*

245. As the terms used in the preamble of Regulation 5, 1827, are general, they include rent-free land as well as land paying revenue to Government, and therefore whenever it is necessary to cause such lands to be attached, it must be done by the issue of a precept to the Collector — *Con. 1039, Cal. C. 19th Aug., Wesu. C. 26th Sept. 1836.*

Rent-free lands may be thus attached

246. An estate having been ordered for attachment by the Civil court, under Section 26, Regulation 5, 1812, and attached by the Collector under Regulation 5, 1827, it is incompetent to the court to interfere with its internal management.—*Rep. Sum. Cases, 10th Jan. 1812, p. 22.*

The civil court can not interfere in the management of estates thus attached by the collector

247. Held that the Civil courts cannot give orders with regard to the management of estates directed under Section 26, Regulation 5 of 1812, to be held in attachment by the revenue authorities under Regulation 5 of 1827 — *Rep. Sum. Cases 16th March 1817*

Idem.

## SECTION XII

### *Zillah and City Courts Process*

248. Every process, rule, order or decree, of the Zillah and City courts (with the exception contained in this section) is to be immediately served or executed, without application to any person or the interference of any individual whomsoever, according to the requisition of it, within the limits of the special jurisdiction of each court. The summons is to be directed to the mazar of the court — *Reg. 4, 1793 Sect. 13*

Process of the courts to be served according to the requisition of it, without application to any person, or the interference of any individual

249. The following rule of practice is established, with the sanction of the Government:— Writs for the apprehension of the person, or for requiring the personal attendance of Police officers under civil processes, are to be issued through the Magistrate. This rule will not of course apply to notices or proclamations, not requiring personal attendance, or to processes which give the party the option of appearing in person or by vakil. — *Ch. Ord. 25th April 1815.*

Rule of practice regarding the issue of processes

250. Whenever the Judge or Register of a Civil court, or a Magistrate or Joint Magistrate, or any other European public officer, authorized by the Regulations in force to issue process of arrest, or other judicial process, civil or criminal, upon the person or property of individuals, amenable to their respective jurisdictions, may, for any special reason, deem it necessary to be personally present at the execution of such process, and to see that the same be duly executed, in the manner prescribed by the Regulations; it shall be competent to the public officer, who may have issued the process, to attend personally for the purpose abovementioned, and to adopt or direct any legal measures that may be necessary for the due execution thereof — *Reg. 1, 1825, Sect. 2.*

Judicial European officers empowered to superintend and see the execution of their own process, and to adopt such legal measures on the occasion as may appear necessary

251. The amount of tulubannah which may be demandable according to the table mentioned in the preceding clause, shall be specified on the back of each summons or other

The amount of the tulubannah demandable and a specific re-



cept for it to be endorsed on the process, previously to its execution process, and the amount shall be paid, by the person taking out the process, to the nazir previously to the execution of such process: a receipt shall be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received.--*Reg. 26, 1814, Sect. 14, Cl. 6.*

In what language and character the process of the court is to be written

252. All orders and process of the court which may be directed to be served or executed on any person, are to be written or printed in the Persian and Bengal languages, in Bengal and Orissa, and in the Persian language and the Hindoostanee language and Nagree character, in Behar and are to be sealed with the seal of the court, and signed by the Judge. *Reg. 4, 1793, Sect. 20.* [By recent enactments the Bengalee language is to be used in Bengal, and the Oordoo in the North West Provinces.]

The Ooryah language to be used in Orissa

253. In cases in which the Bengal language and character are directed to be used in the province of Bengal, the Ooryah language and character shall be used in the zillah of Cuttack, and in the abovementioned pargannahs. - *Reg. 14, 1805, Sect. 11.*

Orders of the courts not to be headed with the names of heathen deities

254. The Court, having observed in various instances that the proceedings and orders of the different Courts of justice are headed with the names of the heathen deities, desire me to request that such practice may be discontinued in all orders of the courts and processes emanating therefrom.—*Cm. Ord. 3d Dec. 1811, par. 1.*

But this does not apply to petitions, documents or papers presented to the courts

255. At the same time, I am directed to observe that the above order has no reference whatever to petitions, documents or papers of any kind which may be presented to the court in regard to which you will be careful to abstain from all interference.—*Id. per 2.*

## SECTION XIII

### *Zillah and City Courts - Execution of the Process within the limits of the Supreme Court*

With, warrant or other process issued by any court beyond the limits of such courts, may be executed within those limits and in what manner

256. It is hereby enacted, that any writ, warrant, or other process issued by a court, Judge, or Magistrate in the territories beyond the local limits of the Supreme Courts of Calcutta, Madras and Bombay respectively, may be executed within those limits in manner following:—A copy of such writ, warrant, or other process authenticated as such by the attestation of the court, Judge, or Magistrate signing or issuing the same, accompanied by a certified translation in the English language, shall be presented to a Judge of Her Majesty's courts, who may thereupon, under his hand and signature, endorse and direct the same to be executed within the local limits of any of Her Majesty's courts by the Sheriff, or by any Justice of the Peace according to the nature of such writ, warrant, or other process. *Act XXIII. 1810, Sect. 1.*

The names of the parties for & against whom the process issues must be inserted, and not the names of the firms, or companies.

257. The Court direct, with reference to an opinion expressed by the acting Advocate General in a particular case that in every process which may be issued under Act XXIII. 1810 against either property or person, the names of the parties for and against whom respectively the process may be issued, be inserted and not merely the names of the firms or companies under which the respective parties may be associated for trade or business, except when

Exception

company may be empowered by a special law to sue or be sued in the name of an officer of their society or association.—*Cir. Ord. 30th May 1845.*

258. And it is hereby provided, that upon the delivery of every such writ, warrant or process so endorsed as aforesaid to any such Sheriff as aforesaid, every such Sheriff shall make a memorandum of the date of such delivery, and shall execute such writ, warrant or process in like manner as if the same had originally issued from any of Her Majesty's courts and had been delivered at the date as appearing by the memorandum; and such Sheriff shall make no distinction as to priority or otherwise between the execution of any writ, warrant or other process originally issued from any of Her Majesty's courts, and the execution of any writ, warrant and other process, under this Act. But every writ, warrant and other process, whether original, or endorsed, as aforesaid, shall, amongst each other, be subject to the same rules touching the mode and order of execution as are now established in respect of writs, warrants, and other process originally issued from Her Majesty's Courts of justice.—*Act XXIII 1840, Sect. 2.*

259. And it is hereby enacted, that every such Sheriff shall be liable to be proceeded against in Her Majesty's Courts of justice for all matters touching the execution of any writ, warrant or other process executed under this Act, in like manner as if the same had originally issued from any of Her Majesty's Courts of justice. And all persons and property seized or detained under any writ, warrant or process executed by virtue of this Act shall be dealt with in like manner as if such persons or property had been seized or detained under the like writ, warrant or other process issued from any of Her Majesty's Courts of justice.—*Ibid, Sect. 3.*

260. And it is hereby enacted, that all persons disobeying or obstructing the execution of any writ, warrant or other process endorsed under this Act, shall be punishable in Her Majesty's Courts of justice, in like manner as if the same had issued from such courts; provided always that, in the case of process for the attendance of witnesses, Her Majesty's courts shall be governed by the like rules touching expenses and other matters as are established in regard to subpoenas issued from such courts.—*Ibid, Sect. 4.*

261. And it is hereby enacted, in the case of persons seized or detained by virtue of any writ, warrant or other process executed under the authority of this Act by any Justice of the Peace or by any Sheriff, it shall be the duty of every such Sheriff or Justice of the Peace, if so required by the endorsement of the Judge, to deliver the party in custody to such authority or persons as shall be particularly specified in such endorsement and who shall have been charged with the execution of the writ, warrant or other process by the authority originally issuing the same, and for that purpose to cause the party in custody to be conveyed to any place within the Company's territories beyond the local limits of the jurisdiction of Her Majesty's courts.—*Ibid, Sect. 5.*

262. And it is hereby provided, that in the case of any writ, warrant or other process required to be endorsed under the authority of this Act, it shall be lawful for the Judge who shall be required to endorse the same, to remit the same for amendment to the autho-

Upon delivery to sheriff of writ, &c. sheriff shall make a memo of the date of delivery, and execute it as if it had issued out of her majesty's courts. Sheriff, to make no distinction as to priority between writs, &c. delivered him under this act, and writs, &c. issued out of her majesty's courts.

Sheriff to be liable to same proceedings in respect of act done in execution of writs, &c. under this act as of other writs.

Persons disobeying any writ &c. endorsed under this act to be punishable in her majesty's courts.

Persons seized, &c. by virtue of writ &c. under authority of this act shall be delivered if so required, to such authority as is specified in the endorsement.

The judge whose endorsement is required may remit the writ, &c. to the authority issuing it for amendment.

ment, if defective in form, rity issuing the same if the same shall appear to be defective in any matter of form.—  
*Ibid*, Sect. 6.

The judge whose endorsement is required may direct bail to be taken

263. And it is hereby provided, that in the case of any writ, warrant or other process required to be endorsed under the authority of this Act for the seizure or detention of any person, it shall be lawful for the Judge who shall be required to endorse the same to direct by endorsement that bail (the amount and number of sureties to be specified in such endorsement) may be taken; and for this purpose to call for such documents and to make such enquiry as he shall think proper.—*Ibid*, Sect. 7.

Every process to be sent under an envelope to the Deputy Sheriff of Calcutta

264. In continuation of my letter No. 120, of the 15th January last, I am directed by the Court to furnish you with the following detailed instructions on the subject of Act XXIII 1840. Every process, civil or criminal, will be forwarded in an envelope to the address of the Deputy Sheriff of Calcutta either by dawk or by the hands of a peon or other public officer as may be most convenient, with a letter drawn up agreeably to the annexed form marked A.—*Co. Ord* 1st March 1841, *par* 1.

Money will be remitted to the Deputy Sheriff by a bill on the Treasury

265. Any money that it may be requisite to send to the Deputy Sheriff will be remitted by a bill on the General Treasury from the Collector of the district.—*Ibid*, *par* 2.

The process of subordinate judicial officers issued through the principal

266. All subordinate judicial officers will submit the processes of their courts which require execution under Act XXIII 1840, to their European principal, to be by him forwarded in the prescribed manner to the Deputy Sheriff.—*Ibid*, *par* 3.

Forms of processes

267. All processes will be drawn up agreeably to the forms marked B. and C. or agreeably to such other forms as may, from time to time, be enclaved by the Courts of Sadardewanny and Nazimut adawlut.—*Ibid*, *par* 4.

The party at whose request the summons is issued must pay its expenses

268. The party at whose requisition any witness may be summoned, must be prepared to pay to the witness such sum for his expenses as the Judges of Her Majesty's Supreme Court may consider reasonable and proper.—*Ibid*, *par* 5.

All processes agreeably to the orders of Government

269. The Judges and Magistrates of the *zillah* courts will be careful that their own processes are drawn up correctly, and they will ascertain that the processes of the subordinate courts, that may be forwarded to the Deputy Sheriff, are drawn up agreeably to these rules and to the Acts and Regulations of Government.—*Ibid*, *par* 6.

Returns of the number and description of processes

270. You will be pleased to submit to this Court on the 1st September next, a return shewing the number and description of processes that may have been issued from the courts of your district under the provisions of Act XXIII 1840, giving the total expence that may have been incurred by the parties on this account.—*Ibid* *par* 7.

#### 271. (A) To the Sheriff of Calcutta

Notice

I beg leave to enclose you a notice\* to be served on the parties therein named which I request you will have the goodness to present to the Judges of Her Majesty's court

\* A proclamation to be affixed to the outer door of the house in which the parties reside, or, a subpoena to be served on the witnesses therein named, or, a warrant to seize and apprehend the witnesses therein named, &c. &c.

\* mutatis mutandis

agreeably to Act XXIII. 1840. It will rest with the party at whose instance the process has been issued to pay the expences of serving it.

Zillah \_\_\_\_\_

*Judge or Magistrate.*

January, 184—.

—*Civ. Ord.* 15th July 1842

(CIVIL PROCESSES)

272 No. 1. SUMMONS.

Form of a summons

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Ramdhun, of Byedbatty, Plaintiff, *versus* Sheik Edoo, of Cossitollah, in the Town of Calcutta.  
Defendant.

*To Sheik Edoo, of Cossitollah in the Town of Calcutta*

Take notice, that Ramdhun, of Byedbatty, has instituted a suit against you in this court (or in the court of the Moonsiff of Byedbatty, or in the court of the Sudder Ameen of this district) for the recovery of three hundred rupees, you are therefore required agreeably to Regulation 2 of 1806, to acknowledge the receipt of this notice, and further to attend in person, or by vakeel, and to deliver an answer to the plaint on or before the 22d of April, 1841.

Given under my hand and the seal of the court, this 5th day of April, 1841

L. S.

A B., *Judge*

—*Civ. Ord.* 1st March 1841.

273. No 2 PROCLAMATION FOR THE ATTENDANCE OF THE DEFENDANT

Of a proclamation  
for the attendance of  
defendant

*In the Court of Dewanny Adawlut for the Zillah of Hooghly*

*To Sheik Edoo, of Cossitollah, in the Town of Calcutta.*

Whereas Ramdhun, of Byedbatty, has instituted a suit against you in this court (or in the court of the Moonsiff of Byedbatty, or in the court of the Sudder Ameen of this district,) for the recovery of three hundred rupees, and whereas a notice was duly issued, requiring you to attend and to deliver in answer to the plaint on or before the 22d day of April, 1841, and whereas it appears from the return of the Nazir (or from the return of the Deputy Sheriff of Calcutta) that after diligent search, you were not to be found and that the said notice was not served upon you according to the exigence thereof. Proclamation therefore is hereby made agreeably to Regulation 2 of 1806, that if you do not appear in person or by vakeel on or before the 15th day of May, 1841, the court will proceed to try the cause ex-parte, and give judgment as if you had appeared, and answered to the plaint

Given under my hand and the seal of the court, this 25th day of April, 1841.

L. S.

A B., *Judge*

—*Ibid.*

274 No. 3 SUBPOENA.

Of a subpoena

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Ramdhun, of Byedbatty, Plaintiff, *versus* Sheik Edoo, of Cossitollah, in the Town of Calcutta.  
Defendant.

*To Baboo Ramdass, of Cossitollah, in the Town of Calcutta.*

Whereas your attendance is required to give evidence on behalf of the plaintiff (or of the defendant) in the above cause, you are hereby required personally to appear before this court

(or before the court of the Moonsiff of Byedbatty,) on the second day of June, 1841, for that purpose

Given under my hand and the seal of the court, this 27th day of May, 1841.

L S

A. B., Judge.

—*Ibid.*

Form of a warrant for apprehending a witness

275. No. 4. WARRANT FOR THE APPREHENSION OF A WITNESS.

*To Mohumad Ally, Nazir of the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Whereas Baboo Randass, of Cossitollah, in the town of Calcutta, was duly subpoenaed on the 27th day of May, 1841, to give evidence on behalf of Ramdhun, of Byedbatty, plaintiff and whereas the sum of ten rupees was tendered to the said Baboo Randass for his expenses, as appears by the declaration of Shuk Mungloo peada, who has also declared to the due service of the said subpoena, and whereas the said Baboo Randass has neglected and refused to appear according to the exigence of the subpoena you are hereby directed to apprehend the said Baboo Randass and to produce him before the Judge of the said Zillah or before the Moonsiff of Byedbatty in the said Zillah. In this I do not. Dated the 10th day of June, 1841.

L S

A. B., Judge

—*Ibid.*

Form of a warrant for security to be furnished by a defendant

276. No. 5. WARRANT FOR SECURITY TO BE FURNISHED BY A DEFENDANT

*To Mohumad Ally, Nazir of the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Whereas Moonshee Khyroollah has instituted a suit in this court against John Smith for the recovery of twelve hundred rupees, and whereas the said Moonshee Khyroollah has satisfied the court by sufficient proof, that the said John Smith intends to abscond and to withdraw himself from the jurisdiction of the court, you are therefore hereby authorized and required to demand good and sufficient security in the sum of fifteen hundred rupees from the aforesaid John Smith for his personal appearance before this court and in the event of the said John Smith not giving good and sufficient security as aforesaid you are further authorized and commanded to take the said John Smith into custody and to bring him before this court.

Given under my hand and the seal of the court, this 10th day of May, 1841

L S

A. B., Judge

—*Ibid.*

Form of a security bond to be executed by defendant

277. No. 6. SECURITY BOND TO BE EXECUTED BY A DEFENDANT.

Whereas a suit has been instituted in the Dewanny Adawlut of the Zillah of Hooghly by Moonshee Khyroollah, plaintiff, against John Smith, defendant, and whereas I, Ram Mohan Mullick, mubadit of Scaddah in the 24-Pingunnahs, have voluntarily become security for the appearance of the said defendant to answer to the said suit and perform all such orders as may be passed thereupon, until the final decree on it shall have been carried into execution I do therefore hereby engage and bind myself, my heirs and executors, that the said defendant shall appear in person or by vakeel to make answer to the plaintiff against him in the suit aforesaid, on or before the 20th day of May, 1841, and further that the said defendant shall personally attend in the said Zillah court whenever the same may be required by the Judge thereof at any time whilst the above suit is depending before the Zillah court, or before the final decree which may be passed thereupon by the above court shall be fully and completely carried into execution, in default of which, and in the event of my not producing the said defendant when called upon, I will be answerable for such sum as may be adjudged against him, and for the due

formance of whatever order or decree may be passed against him on the suit abovementioned provided the same does not exceed the sum of fifteen hundred rupees. Dated this 25th day of June, 1841.

Sealed and delivered in the presence of A. B. and C. D.

RAMMOHUN MULLICK.

—*Ibid.*

278. No. 7. WRIT OF SEQUESTRATION.

Form of a writ of sequestration.

*To Mohumud Ally, Nazir of the Court of Dewanny Adawlut of Zillah Hooghly.*

Whereas Sheik Syfoo has instituted a suit in this court against Ram Sohaee Singh for the recovery of ten thousand rupees, and whereas the said Sheik Syfoo has satisfied the court by sufficient proof that he has just ground to apprehend that the said Ram Sohaee Singh means to dispose of his property whilst the suit against him is pending, for the purpose of avoiding the execution of an eventual judgment against the said Ram Sohaee Singh; you are therefore hereby authorized and required to demand good and sufficient security from the aforesaid Ram Sohaee Singh in the sum of twelve thousand rupees to make good the ultimate decision of the court, and in the event of the aforesaid Ram Sohaee Singh not giving good and sufficient security within the period of 24 hours, you are hereby further authorized and commanded to attach and sequester any lands, goods and effects, or other property belonging to or possessed by the said Ram Sohaee Singh to the amount of twelve thousand rupees, and to hold the same under attachment and sequestration until a final decision be passed by this court.

Given under my hand and the seal of the court, this 15th day of June, 1841.

L. S.

A. B., Judge

—*Ibid.*

279. No. 8. WRIT OF EXECUTION AGAINST THE PERSON.

Of a writ of execution against the person.

*To the Nazir of the Court of the Dewanny Adawlut for the Zillah of Hooghly*

Whereas Munsaram was directed by a decree of this court, under date the 15th day of May, 1841, to pay to Edoos Sheik the sum of Rs. 500, and 50 Rs. for costs of suit amounting to Rs. 550, and whereas the said Munsaram having notice of the said decree, has omitted to liquidate the same: these are therefore to command you to apprehend the said Munsaram; and unless the said Munsaram shall pay to you the said sum of Rs. 550 in satisfaction of the said decree, and costs, and the sum of 10 rupees for the costs of executing this process, to produce him before this court to be dealt according to law.

Given under my hand and the seal of the court, this 2d day of June, 1841.

L. S.

A. B., Judge

—*Ibid.*

280. No. 9. WRIT OF EXECUTION AGAINST THE ESTATE.

Of a writ of execution against the estate.

*To the Nazir of the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Whereas Cossinath was directed by a decree of this court under date the 15th June, 1841, to pay to Mohumud Ally the sum of Rs. 5000, with interest at twelve per cent. per annum to the day of payment, which to this date amounts to Rs. 33-5-8, and 500 Rs. for costs of suit amounting to Rs. 5,533-5-8, and whereas the said Cossinath having had notice of this decree, has omitted to liquidate the same: these are therefore to command you to levy the said

sum of Co.'s Rs. 5,533-5-8, and the sum of 100 Rs. for the costs of executing this process by distress and sale of the lands, goods and chattels, of the said Cossinath, and you are hereby ordered and directed, to distrain the lands, goods and chattels of the said Cossinath; and to sell and dispose of the same, within (not less than thirty days,) unless the sum of Co.'s Rs. 5,533-5-8, for which such distress shall be made, together with the reasonable charges of taking and keeping such distress shall be sooner paid, and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

Given under my hand and the seal of the court, at Hooghly, this 20th day of June, 1841.

L. S.

A B, Judge.

—*Ibid.*

How a writ for the sale of property in Calcutta is to be drawn up or executed

281. A writ for the sale of property situated in Calcutta, will be drawn up in the form No. 9, which the Sheriff, after endorsement by a Judge of Her Majesty's court, will execute in like manner as if the writ had been issued by that court.—*Cir. Ord. 15th July 1842. par. 2.*

Course to be pursued when claims are set up to property in Calcutta, for the sale of which a writ has been issued by a Mofussil court

Opinion of the Advocate General

282. With reference to the Circular order, No. 149, 1st March, (Western Provinces, 18th June,) 1841, conveying instructions on the subject of Act XXIII. 1840, the Court circulate, for general information, the opinion delivered by the acting Advocate General on the course to be pursued when claims are set up to property, for the sale of which a writ may have been issued by a Mofussil court.—*Opinion of the Officiating Advocate General, dated 12th July, 1842.*—The Sheriff is expressly enjoined by Act XXIII. of 1840, Sections 2 and 3, to execute writs, warrants, and other process issued by the Mofussil courts and judicial officers, precisely in like manner, as if the same had originally issued from the Supreme court, to which alone he is not responsible for the due execution thereof; and in order to facilitate such execution, the Judge of the Supreme Court, who shall endorse the process, is invested with certain power as to correction of the process, and other particulars. In the instance before me, the Sheriff appears to have proceeded in the regular course to seize the rights and title of the defendants in execution in certain parcels of real property pointed out to him on the part of the plaintiffs. That right and title may be none at all, or may be qualified or subject to mortgage, prior seizures, or the like. As the Sheriff seizes and sells at his own peril, or refuses to do so at his own peril, (by return of nulla bona, &c.) he, in practice, calls upon the parties calling upon him to seize, or pointing out the property, to indemnify him whenever a third party claims an interest; and if both parties offer indemnity, he may, at his own peril, elect which indemnity he thinks the best and either sell or release accordingly, being liable in damages to the opposite party if he shall make out his case to be the true one. I would however suggest, as an act of prudence, that the Mofussil judicial officers mix themselves up in these matters as little as possible, and leave it to the parties interested to give the directions and information to the Sheriff, which of course they must do at their own charge and peril. It would in English Judges be thought not only a loss of dignity, but an act of unpropriety, to interfere in any execution whatever, unless formally applied to judicially by some of the parties litigating. The Mofussil Judge, in the instance before me, corresponds with the Sheriff, may go so far as to engage for his expences or fees—such a proceeding may perhaps be regular or even necessary in Mofussil execution, but will appear very strange in an English Court of justice.—*Cir. Ord. 15th July 1842.*

283. Supplementary to the Circular orders, No. 1368, of the 1st March last, relative to

processes under Act XXIII. 1840, the Court publish the subjoined forms.—*Cir. Ord. 24th Dec. 1841.*

284. No. 10 NOTICE OF EXECUTION FOR SERVICE ON DEFENDANT, AGAINST WHOM DECREES  
MAY BE PASSED EX-PARTE.

Form of a notice of execution for service on defendant, against whom decree may be passed *ex-parte*.

*In the Court of Dewanny Adawlut, for the Zillah of Nuddeah.*

Mirzah Gholam Furreed, Plaintiff, *versus* Rammohun Chootyar, and Bheem Chootyar, son and heir of Bindabun Chootyar, of Baugh Bazar, in the town of Calcutta, Defendants.

*To Rammohun Chootyar and Bheem Chootyar, of Baugh Bazar, in the town of Calcutta.*

Take notice, that an *ex-parte* decree was passed against you on the 7th day of August, 1839, in favor of Mirzah Gholam Furreed, plaintiff, by the Moonsiff of Hunwah, in this district, for the sum of Company's Rupees forty-five, three annas, and six gundahs, including costs and interests to the 7th May, 1841

You are therefore required, agreeably to Clause 8, Section 15, Regulation XXVI. of 1814, to acknowledge the receipt of this notice, and further to attend in person or by *vakeel* on or before the 5th day of August, 1841, and shew sufficient cause to the satisfaction of the court why the said decree should not be executed against you.

Given under my hand, and the seal of this court, this 9th day of July, 1841

L. S.

A. B., Judge

—*Ibid.*

285. No. 11. NOTICE FOR THE APPEARANCE OF HEIRS OF DECEASED PARTIES

Of a notice for the appearance of heirs of deceased parties

*In the Court of Dewanny Adawlut for the Zillah of ———.*

A. B., Plaintiff or Appellant, *versus* B. C., Defendant or Respondent.

Whereas, it appears from the return of the Nazir of this court (or petition, &c. as the case may be,) that A. B., plaintiff in the above case, has deceased, notice is hereby given, that the heirs of the late A. B. are required and directed to attend in this court within ——— from the ——— day of ——— and prove their right and title to succeed to the estate of the said A. B. deceased.

Given under my hand, and the seal of this court, this ——— day of ———, 184—.

L. S.

L. C., Judge

—*Cir. Ord. 24th Dec. 1841*

286. The court are pleased to prescribe the following forms for use under Act XXIII. 1840, in addition to those communicated with the Circular orders, Nos. 140 and 218 dated respectively the 1st March, 1841, and the 15th July, 1842, (Western Provinces the 18th June, 1841, and the 22d August, 1842.)—*Cir. Ord. 15th May 1846*

287 No. 12. NOTICE TO RESPONDENT.

Of a notice to respondents

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Buldeb Sircar, of Amirpore, Purgunnah Kowas, Zillah Moonshedabad, Appellant, *versus* Kishen Peerya, widow of Nnr Naram Roy, deceased, and guardian of Kishen Inder Naram Roy, infant, Respondent.

To Kishen Peerya and so forth.

Whereas Buldeb Sircar has presented a petition of appeal praying for the reversal of the



decision of the court of the Sudder Ameen, dated 5th September, 1845, awarding to you possession of talook Amceerabad in zillah Moorshedabad; you are hereby required to acknowledge the receipt of this notice, and further to appear in person or by vakeel in the court of the Principal Sudder Ameen, and to deliver an answer to the petition of appeal on or before the \_\_\_\_\_.

Given under my hand and the seal of the court this

L. S.

A. B., Judge.

—*Ibid.*

Form of a proclamation for the attendance of the respondent

#### 288. No. 13. PROCLAMATION FOR THE ATTENDANCE OF THE RESPONDENT.

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Buldeb Sircar, of Amirpore, Putgunnah Kowas, Zillah Moorshedabad, Appellant, *versus* Kishen Peerya, widow of Nur Nuran Roy, deceased, and guardian of Kishen Inder Nuran Roy, infant, Respondent.

To Kishen Peerya and so forth

Whereas Buldeb Sircar has presented a petition of appeal, praying for the reversal of the decision of the court of the Sudder Ameen, dated 5th September, 1845, awarding to you possession of talook Amceerabad in zillah Moorshedabad, and whereas a notice was duly issued requiring you to attend and to deliver an answer to the petition of appeal on or before the \_\_\_\_\_ day of \_\_\_\_\_, and whereas it appears from the return of the Nazir (or from the return of the Deputy Sheriff of Calcutta) that after diligent search you were not to be found, and that the said notice was not served upon you according to the exigence thereof, proclamation therefore is hereby made that if you do not appear in person or by vakeel on or before the \_\_\_\_\_, the court will proceed to try the cause *ex-parte* and give judgment, as if you had appeared, and answered to the plaint.

Given under my hand and the seal of the court, this \_\_\_\_\_.

L. S.

A. B., Judge

—*Ibid.*

On a notice to mortgager for the redemption of mortgage and conditional sale of land

#### 289. No. 14. NOTICE TO MORTGAGOR FOR THE REDEMPTION OF MORTGAGE AND CONDITIONAL SALE OF LAND

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

To Baboo Ramdas, of Colocollah, in Calcutta.

Whereas Ramnarain Bose, of Byedbatty, has, in a petition, dated the \_\_\_\_\_, of which a copy is herewith annexed, applied to this court, for foreclosing the mortgage and rendering conclusive the sale of certain landed property situate in this zillah, agreeably to the provisions of the deed of mortgage and conditional sale which he holds, you are hereby required to take notice that if you shall not, in the manner provided for by Section 7, Regulation 17, 1806, and within one year from the date of this notice, redeem the property mortgaged to the aforesaid Ramnarain Bose, the mortgage will be finally foreclosed, and the conditional sale will become conclusive.

Given under my hand and the seal of the court, this 5th day of April, 1846.

L. S.

A. B., Judge.

—*Ibid.*

290. No. 15. NOTIFICATION OF THE DEATH, DISMISSAL, RESIGNATION, OR ABSENCE OF A  
VAKEEL.

Form of a notification of the death, dismissal, absence or resignation of a vakeel.

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Ramdhun, of Byedbatty, Plaintiff, *versus* Sheikh Edoo, of Cossitollah, in Calcutta, Defendant.

Mohumud Ally, of Pundoab, Plaintiff, *versus* Gholam Hossein, of Sobha Bazar, in Calcutta, Defendant.

Whereas Moonshee Chytun Churn, one of the vakeels engaged in the abovementioned causes, depending in this court (or in the court of the Moonsiff of ————,) has demised,\* the parties thereto are required within six weeks (or two months,) from this date to appear in person at the said court or to substitute other vakeels in the room of the said Moonshee Chytun Churn formerly appointed by them.

Given under my hand and the seal of the court, this 5th day of April, 1846.

L. S.

A. B., Judge.

*Ibid.*

291. No. 16. NOTICE TO PLAINTIFF TO PROSECUTE A REMANDED CASE.

Of a notice to plaintiff to prosecute a remanded case

*In the Court of Dewanny Adawlut for the Zillah Hooghly.*

Govindram, of Baug Bazar, in the town of Calcutta, Plaintiff, *versus* Gholam Hyder, of Byedbatty, Defendant.

To Govindram of Baug Bazar, in the town of Calcutta

Whereas the case of Govindram of Baug Bazar, in the town of Calcutta, *versus* Gholam Hyder, of Byedbatty, wherein you are plaintiff which was decided by this court (or the court of the Moonsiff of ————) under date ————, has been remanded by the court of

for further investigation (or to be tried de novo) with directions that it be restored to its original number on the file of this court; and it appears on enquiry, that no vakeel is in attendance in this court to represent you in this suit.† take notice therefore, that in the event of your failing to adopt measures, either in person or by vakeel for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default

Given under my hand and the seal of the court, this ———— day of ————.

L. S.

A. B., Judge

— *Ibid.*

292. No. 17. NOTICE TO DEFENDANT TO DEFEND A REMANDED CASE.

Of a notice to defendant to defend a remanded case

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Ramdhun, of Byedbatty, Plaintiff, *versus* Sheikh Edoo, of Cossitollah, in the town of Calcutta, Defendant.

To Sheikh Edoo, of Cossitollah, in the town of Calcutta.

Whereas the case of Ramdhun, of Byedbatty, *versus* Sheikh Edoo, of Cossitollah, in the town

\* Or has been dismissed, or has resigned, or has been long absent

† Or that the vakeel retained by you during the previous investigation of the suit, though in attendance has not received any instructions from you, and that he is not prepared to go on with the case

of Calcutta, wherein you are defendant, which was decided by this court (or by the court of the Principal Sudder Ameen) under date the \_\_\_\_\_ has been remanded by the court of \_\_\_\_\_ for further investigation (or to be tried de novo) with directions that it be restored to its original number on the file of this court, and it appears on enquiry that no vakeel is in attendance in this court to represent you in the suit ;\* take notice, therefore, that in the event of your failing to adopt measures, either in person, or by vakeel, on or before the \_\_\_\_\_, to make answer in the said suit, the court will proceed to try the same ex-parte and give judgment as if you had appeared and answered to the plaint.

Given under my hand and the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_

L S

A. B., Judge.

—*Ibid.*

Form of a proclamation for the appearance of the plaintiff in a remanded case

203. No. 18. PROCLAMATION FOR THE APPEARANCE OF THE PLAINTIFF IN A REMANDED CASE

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Govindram, of Bang Bazar, in the town of Calcutta, Plaintiff *versus* Gholam Hyder, of Byedbatty, Defendant.

To Gobindram, of Bang Bazar, in the town of Calcutta

Whereas the case of Govindram, of Bang Bazar, in the town of Calcutta, *versus* Gholam Hyder, of Byedbatty, wherein you are plaintiff, which was decided by this court (or the court of the Moonsiff) under date \_\_\_\_\_, has been remanded by the court of \_\_\_\_\_ for further investigation (or to be tried de novo) with directions that it be restored to its original number on the file of this court, and whereas a notice was duly issued, requiring you to adopt measures to prosecute the said case, and whereas it appears from the return of the Nair (or the Deputy Sheriff of Calcutta,) that, after diligent search, you were not to be found, and that the said notice was not served upon you according to the exigence thereof, proclamation is therefore hereby made that in the event of your failing to adopt measures for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default.

Given under my hand and the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_

L. S.

A. B., Judge.

—*Ibid.*

Form of a proclamation for the appearance of the defendant in a remanded case

204. No. 19. PROCLAMATION FOR THE APPEARANCE OF THE DEFENDANT IN A REMANDED CASE.

*In the Court of Dewanny Adawlut for the Zillah of Hooghly.*

Ramdhan, of Byedbatty, Plaintiff, *versus* Sheikh Edoo, of Cossitollah, in the town of Calcutta Defendant.

To Sheikh Edoo, of Cossitollah, in the town of Calcutta

Whereas the case of Ramdhan, of Byedbatty, *versus* Sheikh Edoo, of Cossitollah, in the town of Calcutta, wherein you are defendant, which was decided by this court (or the court of the Moonsiff of \_\_\_\_\_) under date the \_\_\_\_\_, has been remanded by

\* Or that the vakeel retained by you during the previous investigation of the suit, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case

the court of \_\_\_\_\_ for further investigation (or to be tried *de novo*) with directions that it be restored to its original number on the file of this court; and whereas a notice was duly issued, requiring you to adopt measures to make answer in the said suit; and whereas it appears from the returns of the Nazir (or the Deputy Sheriff of Calcutta) that after diligent search you were not to be found, and that the said notice was not served upon you according to the exigence thereof; proclamation is therefore hereby made that if you do not appear in person or by vakeel on or before the \_\_\_\_\_ to make answer in the said suit, the court will proceed to try the same *ex-parte*, and give judgment in the same manner as if you had appeared and answered to the plaint.

Given under my hand and the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_

L. S.

A. B., Judge.

—*Ibid.*

#### 295. No. 20. SUBPOENA TO PRODUCE BOOKS AND PAPERS.

*In the Court of Dewanny Adawlut for Zillah Twenty-four Pergunahs*

Kaleekishen Nag, Appellant, *versus* Runneedee Bose, and others, Respondents.

To \_\_\_\_\_, of Calcutta.

Whereas your attendance is required to give evidence in the above cause, you are hereby required personally to appear before the Court of Sudder dewanny adawlut, on the \_\_\_\_\_ day of \_\_\_\_\_ next, and to take with you the Registry books of the Bank of \_\_\_\_\_ in which the undermentioned notes of said Bank are registered, *viz.*

Nos. \_\_\_\_\_ each for Sa. Rs. 500.

Nos. \_\_\_\_\_ each for Sa. Rs. 1000

Given under my hand and the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_, 184—

L. S.

A. B., Judge.

—*Ibid.*

#### 296. No. 21. SECURITY BOND TO BE EXECUTED BY THE SURETY OF AN APPELLANT

Whereas an appeal has been preferred in the Court of Sudder dewanny adawlut, by William Hunter, from a decision passed against him and in favour of George Thomas by the Dewanny adawlut of Zillah Purneah, and whereas I \_\_\_\_\_, inhabitant of \_\_\_\_\_, have voluntarily become security for the performance of the said William Hunter of all orders which may be passed thereon; I do hereby engage and bind myself, my heirs and successors, that the said William Hunter shall pay the respondent the said George Thomas, or his representatives, whatever sum may be adjudged by the Sudder dewanny adawlut to the said respondent, or his representatives, in default of which, I, my heirs and successors, will be answerable for such sum as may be adjudged against him, and for the performance of whatever order or decree may be passed against him in the appeal above-mentioned

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 184—.

Sealed and delivered in the presence of A. B. and C. D.

—*Ibid.*

297. In continuation of Circular No. 13, dated the 15th May last, the Court are pleased to prescribe the following form of notice to respondents in appeal to the Privy Council for use under Act XXIII. 1840.—*Cir. Ord. 26th Dec. 1846.*

Form of a subpoena to produce books and papers.

Of a security bond to be executed by the surety of an appellant

Form of a notice to respondents in appeal to the privy council.

### 298. No. 22. NOTICE TO RESPONDENT IN APPEAL TO THE PRIVY COUNCIL.

*In the Court of Dewanny Adawlut for the Zillah Hooghly.*

Buldeb Sircar, of Amritpore Pargunnah Kowas, Zillah Moorsshedabad, Appellant, *versus* Kishen Peerya, widow of Nui Narain Roy, deceased, and guardian of Kishen Inder Narain Roy, infant, Respondent.

To Kishen Peerya and so forth.

Whereas Buldeb Sircar has presented a petition of appeal to the Queen in Council, praying for the reversal of the decree of the Sudder dewanny adawlut, dated 1st January, 1846, awarding to you possession of talook Amcerabad in zillah Moorsshedabad; and whereas the said Buldeb Sircar has furnished the required security and conformed to all the requisitions preliminary to the transfer of the record of the suit to England, notice is hereby given to you of the same and farther that the appeal will be considered and held to be abandoned and withdrawn by consent of the parties thereto, unless some proceedings shall be taken in England the same, by one or more of the parties thereto within two years after registration at the Council office of the arrival of the transcript or copy of the record, and you are hereby required to acknowledge the receipt of this notice.

Given under my hand and the seal of the court, this ———.

L. S.

A. B., Judge.

—*Ibid*

## SECTION XIV

### *Zillah and City Courts—Resistance of Process—Forfeiture of Land—Fines.*

Zillah & city courts now to proceed against persons resisting process, who are not proprietors of land, talookdars, or farmers.

Offender to be summoned to answer for his conduct.

Court how to proceed if the offender shall not obey the summons.

299. If any person not being a zemindar, independent talookdar, or other actual proprietor of land, or a dependant talookdar, or a farmer of land holding a farm immediately of Government, shall resist, or cause to be resisted, any process, rule, order, or decree, which may at any time issue from the Court of Dewanny adawlut established in any zillah, or in either of the three cities of Patna, Dacca, and Moorsshedabad, on proof of the resistance being made by oath to its satisfaction, the court is to cause the offender to be summoned to answer to the charge. If the person for whom the summons may be issued shall abscond, or shut himself up in his own, or any house, or building, or retire to any place that he cannot be served with the summons, the court is to proceed against him in the manner directed with regard to other persons absconding, or otherwise acting as above specified, so that they cannot be served with the process of the court. If the offender shall not appear within the prescribed period, or if he shall appear within the limited time, and after receiving his answer, and hearing the evidence which he may have to produce in his defence, it shall be proved to the satisfaction of the court, that he is guilty of the charge, the court is to adjudge the offender to pay such fine to Government as may appear to it proper upon a consideration of his situation and circumstances in life, and the offence of which he may be convicted.—*Reg. 4, 1793, Sect. 25.—Benar's Reg. 8, 1795, Sect. 8.—Ced. and Conq. Prov. Reg. 3, 1803, Sect. 26.*

300. On an enquiry, whether persons on whom a summons has been issued to answer a charge of resistance of process, are at liberty to answer a charge through a vakeel without appearing in person; the Court informed the Judge that as the object of a summons, in the case referred to, is to give the summoned party an opportunity of defending himself against the charge, which is distinct from ordering his apprehension after conviction, in consequence of non-payment of any fine that may have been imposed, with a view to his imprisonment in jail, they are of opinion that a person summoned on the charge described is clearly at liberty to answer such charge through a vakeel, without being obliged to appear in person.—*Con. 1216, West. C. 17th May, Cal. C. 7th June 1839*

A person summoned to defend himself from a charge of resistance may employ a vakeel

301. Held that a fine imposed under the provisions of Section 25, Regulation 1, 1793, may be levied under the same rules as are applicable to the execution of decrees of court, that is, either by sale of the property of the individual on whom the fine is imposed, or by the imprisonment of the individual.—*Con. 1214, Cal. C. 3d West. C. 24th May 1839*

How a fine for resistance of process may be levied

302. If the offender shall not prefer an appeal within the time prescribed for lodging appeals, the court is to proceed to levy the amount by the same process by which it is empowered to carry its decrees for sums of money into execution.—*Reg. 4, 1793, Sect. 25—Benares Reg. 8, 1795, Sect. 8—Cal. and Com. Prov. Reg. 3, 1803, Sect. 26*

Persons fined by any Zillah or city court under this section to be allowed an appeal to the higher courts under the regulations

303. I am further directed to add, for the information of the Judge of Patna to whom you are requested to forward a copy of this letter, that he should himself dispose of all common cases of resistance of civil process, under Section 25, Regulation 1, 1793, and that he should make over to the Magistrate those cases only which may have been attended with acts of violence amounting to a breach of the peace.—*Con. 1033, 12th Aug. 1836*

What cases of resistance a judge must dispose of himself, and what he should make over to the magistrate

304. The Court, having had before them your letter of the 25th ultimo, requesting to be informed whether, in the event of a legal arrest, by a warrant issued from the Civil court, and a forcible rescue from the custody of its officers, the Magistrate, on proof of such rescue is empowered to order the Police forcibly to enter the house wherein the person rescued may be, and to apprehend him and forward him to the Civil court, direct me to answer your question in the negative, and to observe that in the case supposed, the Civil court should proceed against the offender agreeably to Section 25, Regulation 1, 1793.—*Con. 765, Cal. C. 5th March, West. C. 12th April 1833*

Where there has been a legal arrest by the warrant of a civil court, and there is a forcible rescue, the civil court will proceed according to reg. 1, 1793, sec. 25

305. The Court observe that when the Judge of one district may be called upon to aid the process of another Zillah court, the practice is for him to back the same with his official signature, and to send one or more of the peons of his court to aid in its execution, and they are therefore of opinion, that in ordinary cases any resistance to such process must be considered as a resistance to the process of the court within whose jurisdiction it took place, and is cognizable as such by the Judge of that court.—*Con. 1115, West. C. 24th Nov, Cal. C. 5th Dec*

By the judge of what court a case of resistance of process is cognizable

306. If a zemindar, independent talookdar, or other actual proprietor of land, or a dependant talookdar, shall resist, or cause to be resisted, any process, rule, order, or decree of a Zillah court, the court, on proof of the resistance being made by oath to its

Zillah court how to proceed against zemindars, independent talookdars, or other actual proprietors of

land, or dependant talookdars, who may resist their process.

Offender to be summoned to answer for his conduct.

Court how to proceed if the offender shall not obey the summons.

Decree to be passed if the offender shall not appear, or shall appear and be proved guilty of the charge.

satisfaction is to cause the offender to be summoned to answer to the charge. If the offender shall abscond, or shut himself up in his own or any house, or in any building, or retire to any place, so that he cannot be served with the summons the court is to proceed against him in the manner directed with regard to other persons absconding or acting as above specified, so that they cannot be served with the process of the court. If the offender shall not appear within the prescribed time, or, if he shall appear, and after receiving his answer to the charge, and hearing the evidence which he may produce in his defence, it shall be proved to the satisfaction of the court, that he is guilty of the charge, the court is to decree that the offender shall from the date of the decree, forfeit his zemindary talook, or other estate, in which the resistance may have been made: or, if the resistance shall have been made out of the limits of the estate of the offender, the zemindary, talook, or other landed property that he may possess within the jurisdiction of the court, the process of which may have been resisted -- *Reg. 1, 1793, Sect. 22.* -- *Benares Reg. 8, 1795, Sect. 2.* -- *Ced. and Cong. Pron. Reg. 3, 1803, Sect. 23, Cl. 1*

A copy of the decree to be sent to the G. G. in C., if the cause shall not be appealed in time.

307. If the cause shall not be appealed -- within the time limited for preferring appeals -- the court is immediately to forward a copy of its decree and proceedings respecting the charge to the Governor General in Council. -- *Ibid.*

S. D. A how to proceed if the suit should be appealed to them, and they should confirm the decision of provincial court.

308. If an appeal shall be received from the lower court and the Sudder dewanny adawlut should confirm the decree of that court they are immediately to transmit a copy of their decree and proceedings, and of the decrees and proceedings received from the lower court to the Governor General in Council. -- *Ibid.*

If the lands are decreed forfeited, the G. G. in C. may confirm the decree, or commute the forfeiture for a fine within 4 weeks after he may receive the decree.

If the forfeiture is commuted for a fine, by what court and how it is to be levied.

309. It shall be at the option of the Governor General in Council, within four weeks after the receipt of a decree adjudging the estate of any person forfeited under this section, either to order it to be executed or to commute the forfeiture for such fine as upon a consideration of the situation and circumstances in life of the offender, he may think adequate to the offence for which the decree may be passed. In the event of the Governor General in Council commuting the forfeiture for a fine, the court which shall have transmitted the decree and proceedings to him, upon receiving notice of the fine that he may impose is to levy the amount of it by the same process as is prescribed for enforcing decrees of the court. But if the Governor General in Council shall not within four weeks after the decree shall have been received by him, either order it to be executed or commute the forfeiture for a fine, the decree is to stand good against the offender. In such case, or in the event of the Governor General in Council ordering the decree to be executed, the court is to issue a precept, under the seal of the court and the signature of the Register, requiring the Collector of the revenue of the zillah to depute an ameen with a proper establishment of officers (whose allowances are to be specified in the precept) to sequester the lands, and collect the rents and revenues. If the lands of the offender shall be deemed by the court too inconsiderable to admit of their being charged with the expence of an ameen, they are to direct a precept to be issued to the Collector of the zillah to order the nearest tehseeldar, or any other officer who may be employed under him in the

Decree of forfeiture to be final, if the G. G. in C. shall not order it to be executed, or commute it for a fine within 4 weeks.

If the decree is declared, or becomes final, the court to issue a precept to the collector to sequester the lands.

business of the collections, to take charge of the lands. The officer is to perform the duties prescribed to ameen in such cases, and under the same restrictions and penalties.—*Ibid.*

310. The Judge of zillah Shahabad was informed, that the court do not consider Section 22, Regulation 4, 1793, to authorize or intend a sequestration of lands, till the judgment of forfeiture be confirmed.—*Con. 2, 2d May 1799.*

Lands are not to be sequestered till the judgment of forfeiture is confirmed

311. If the decree adjudging the lands of the offender forfeited, shall be confirmed or stand good under Section 22, it shall be at the option of the Governor General in Council, either to confer the rights which the offender possessed in the lands on his heirs, upon their agreeing to make good all sums whatever that may be due from him to Government on account of the lands forfeited, and to pay the fixed public revenue assessed upon them, or if the property forfeited be a dependant talook, the revenue payable from it to the proprietor within whose estate it may be situated, or, to order the lands to be disposed of at public sale under the rules prescribed for the sale of lands so forfeited in Regulation 4, 1793 — *Reg. 1 1793, Sect. 23. — Benares Reg. 8, 1795, Sect. 6, Cl. 2. — Cal. and Comp. Prov. Reg. 3 1803, Sect. 21*

If the forfeiture should stand confirmed, the G. G. in C. to confer the estate on the heirs of the offender, or to dispose of it at public sale

*The same rules which are given above regarding the resistance of process by a zemindar are made applicable by Section 24 of Regulation 4, 1793, to the case of a resisting farmer*

312. It shall be at the option of the Governor General in Council, within four weeks after the receipt of a decree adjudging the lease of a farmer annulled under this section, either to order the decree to be executed, or to commute the forfeiture of the lease for such fine as upon a consideration of a situation and circumstances in life of the offender, he may think adequate to the offence for which the decree may be passed; or if the offender shall not be desirous of being continued in his farms to fine him as above prescribed, and compel him to refrain the farm during the remainder of the lease, and to hold him and his surety responsible for the discharge of their engagements until the term of them shall expire. If a fine shall be imposed upon the offender, the court which shall have transmitted the final decree and proceedings to the Governor General in Council, upon receiving notice of the fine, is to levy the amount of it by the same process as is prescribed for enforcing decrees of the court. But if the Governor General in Council shall not within four weeks after the decree shall have been received by him, either order it to be executed, or commute the forfeiture of the lease for a fine, the decree is to stand good against the offender, and the court is without delay to cause a copy of the decree to be sent to the Collector. If the lease of the offender shall be annulled and a balance shall be due from him to government at the close of the year in which the lease may be cancelled, both he and his surety are to be held responsible for the payment of it, and the Collector of the revenue of the zillah is empowered to proceed against them for the recovery of it in the manner prescribed in Section 20, Regulation

Option reserved to the G. G. in C. to confirm the decree or commute it for a fine, and to compel the farmer to perform the conditions of his lease

By what court and how such fines are to be levied

If the lease of the offender should be annulled, how balances due from him are to be recovered.



Farmers whose leases may be cancelled how to recover balances.

14, 1793, for the recovery of balances due from farmers whose leases may be declared annulled under that Regulation. The offender is permitted to prosecute in the Dewanny adawlut of the zillah in which the farm may be situated, the dependant talookdars, under-farmers, and ryots, in the lands included in the farm, for any arrears of rent or revenue that may be due from them to him on account of the period during which his lease remained in force - *Reg. 4, 1793, Sect. 21. — Benares Reg. 8, 1795, Sect. 8. — Ced. and Cong. Proc. Reg. 3, 1803, Sect. 25 Cl. 1 & 2.*

An appeal against a decree of forfeiture, must be received as a regular appeal

313. An appeal preferred under Section 23, Regulation 6, 1795, or the corresponding section of Regulation 27, 1803, against a decision in the Zillah court, decreeing the forfeiture of an estate to Government for the offence specified in Section 22 of those Regulations, is to be received as a regular appeal under the general rules applicable to regular appeals.—*Con. 198, 8th March 1815*

The appeal from the Judge's decree of forfeiture for resistance lies to the Sudder court

314. As by clause 3, Section 28, Regulation 5, 1831, all suits originally decided by the Judge of a zillah, into which the provisions of Regulation 5, 1831, have been introduced, are appealable to the Sudder dewanny adawlut, an appeal would lie from his decree adjudging forfeiture of lands or fines, in cases of resistance or evasion of process, without reference to the amount of the annual jumma, or produce, or fine, and in such cases the Judge should award the period of appeal to the Sudder court in the same manner as by the enactments quoted by you, they were directed to await an appeal to the Provincial court.—*Con. 780, Cal. C. 12th April, West. C. 10th May 1833*

In what cases a fine may be substituted for the judgment of forfeiture directed by secs. 22, 23 and 24, reg. 4, 1793, and secs. 5, 6, 7 and 8, reg. 8, 1795

315. In all cases of resistance to the process of any Zillah or City court of dewanny adawlut in the provinces of Bengal, Behar, Orissa or Benares, if the Judge of the court whose process may have been resisted, shall be of opinion that a fine to Government will be a more proper and adequate punishment for the offence than a forfeiture of the offender's estate or farm, under the provisions contained in Sections 22, 23 and 24, Regulation 4, 1793; and Sections 5, 6, 7 and 8, Regulation 8, 1795, he is authorized, instead of the decree of forfeiture directed by the above Regulations, to adjudge the offender to pay such fine to Government as may appear proper upon a consideration of his situation and circumstances in life, and the offence of which he may be convicted, as provided with regard to persons not being landholders or farmers of land by Section 25, Regulation 4, 1793, and subject to the provisions in that section for an appeal from the judgment of the court. - *Reg. 9, 1799, Sect. 3. — Benares Reg. 8, 1795, Sect. 2. — Ced. and Cong. Proc. Reg. 3, 1803, Sect. 23, Cl. 1*

Decrees for the forfeiture of estates or farms under above regs. not to be deemed final or carried into execution till confirmed by G. G. in C., and notice of his confirmation be received

316. Further, in cases wherein a decree for the forfeiture of an estate or farm may be passed and transmitted to the Governor General in Council under the Regulation abovementioned, instead of such decree being considered final and carried into execution, unless the Governor General in Council shall order its commutation to a fine within four weeks after the decree shall have been received by him, the decrees in question shall not be hereafter deemed final until confirmed by the Governor General

in Council; and shall not be carried into execution until notice of his confirmation be received.—*Ibid.*

317. Held, that it is not competent to a civil Judge, in cases of resistance of the process of his court, to call upon the Magistrate to enforce his orders, but that he must pursue the course laid down in the Regulations—*Con. 1209, Cal. C. 12th April, West. C 3d May 1839.*

If the process of the civil court be resisted, the Judge cannot call on the magistrate to enforce his orders.

318. Cases of resistance to the processes of the Zillah or City or the subordinate courts, with a view to the forfeiture of estates and the cancelling of farms, will be tried in the first instance by the court whose process may have been resisted, subject to the ordinary course of appeal if competent to try the same, if not, a report should be made to the Judge, who will exercise his discretion in referring them to any other tribunal.—*Gort. Ord. 15th Jan 1831, No 1*

By whom cases of resistance of process will be tried in the first instance.

## SECTION XV

### *Procedure of the Zillah and City Courts—Pleadings.*

319. Two Judges of the Zillah and City courts are to order the causes depending in their respective courts, to be brought on for trial according to the order in which they may be filed, except in cases in which it may be otherwise directed by any Regulation, or in which the Judge may think it proper for special reasons, which he is to state at large upon the record of the trial, to bring on the cause before its turn. The Register is to enter in a book the causes for the trial of which a day may be appointed by the Judge, and on the day fixed, call on the causes for trial in the order in which they may have been entered. A paper containing a list of the causes, and the day appointed for the trial of them, is to be fixed up in some conspicuous part of the court-room seven days previous to the day of trial.—*Reg. 4, 1793, Sect 19,—Benares Reg 8, 1795, Sect 2.—Ced. and Cong. Pron. Reg 3, 1803, Sect 20*

Suits to be brought on for trial in the order in which they may be filed

Exception to the rule

A paper specifying the causes for the trial of which a day has been fixed, is to be stuck up in some conspicuous part of the court room 7 days previous to the trial

320. If the defendant shall appear either in person or by vakeel, the court is to fix a day according to its discretion for him to answer to the complaint, and, if it shall deem it reasonable so to do, may at any time allow the defendant a further period for delivering his answer—*Reg. 4, 1793, Sect 5.—Benares Reg. 8, 1793, Sect 2.—Ced. and Cong. Pron. Reg. 3, 1803, Sect 5*

Upon the defendant appearing, court to fix a day for his answering

321. If the defendant shall not appear in person or by vakeel, by the time limited in such proclamation, or if a defendant, who may have been served with a notice, as directed in the preceding section, shall not appear in person or by vakeel, within the time specified; or if, having appeared, he shall refuse to answer the plaint, or make other default; the court, as provided in the sections abovementioned, shall proceed to try the cause *ex-parte*; and after examining the plaintiff's evidence in support of his claim, shall give judgment, in the same manner as if the defendant had appeared, answered, and entered into proof.—*Reg. 2, 1806, Sect. 3.*

Cases in which the court is to proceed *ex-parte* on the allegations and evidence of the plaintiff only

A defendant who appears at any time before the decision of the suit, and accounts for the delay may file his answer, notwithstanding the commencement of the *ex-parte* investigation.

322. If the defendant do not appear in person or by vakeel, within the time limited in the proclamation prescribed by Section 11, Regulation 4, 1793, the suit should be tried *ex-parte*: but if the defendant appears, at any time before the final decision of the suit, and assigns satisfactory reasons, to shew that the default was not wilful, he should be permitted to file his answer, notwithstanding the commencement of an *ex-parte* investigation: and adduce evidence in support of it, if the merits of the case appear to require it — *Con.* 375, 4th Feb. 1825.

Reasons for the dismissal of a suit must be preferred in answer to the plaint

323. Reasons preferred by a defendant for the dismissal of a regular suit, cannot be urged in a miscellaneous petition, but should be contained in the answer to the plaint.—*Rep. Sum Cases*, 3d Feb. 1845, p. 63

Pleadings in the zillah and city courts under reg. 5, 1811, to be written on paper of the value of 4 rs.

324. So much of the rule contained in Schedule B, Regulation 10, 1829, as prescribes that the pleadings in the courts of the zillah and city Judges shall be written on paper of one rupee value is hereby modified, and the pleadings in the courts of those officers, shall be written on paper of the value of four rupees, wherever it has been or may be resolved to introduce the provisions of Regulation 5, 1831, except in original suits for property not exceeding one thousand rupees in value or amount, and in cases of appeal from the decisions of Sudder Ameeris and Moonsiffs. In such cases, the pleadings shall continue to be written on stamped paper of only one rupee value.—*Reg.* 7 1832, *Sect.* 3

Exceptions

Pleadings and other documents on stamped paper how to be written

325. All pleadings, petitions and applications, all deeds, documents and other papers, whether originals, or copies, which are required by the Regulations to be written on stamped paper, are to be written in a fair legible manner, and as they have been hitherto usually prepared, as well with regard to the size of the writing, the space between the words, and the number of lines in each page, as to all other matters regarding their engrossment.—*Reg.* 26, 1814, *Sect.* 5, *Cl.* 2

Cases in which the plaintiff is to be permitted to prefer a supplemental complaint

326. If from mistake, inadvertence, or other cause the plaintiff shall have omitted to insert in his complaint any thing material to the suit, the court, on the omission being represented either by the plaintiff or his vakeel, is to allow the plaintiff to prefer a supplemental complaint, in which he is to state the matter omitted. The defendant is to be allowed to deliver an answer to the supplemental complaint on a day to be fixed for that purpose; and the plaintiff and defendant are to reply and rejoin in the same manner as on the original complaint, but no other.—*Reg.* 4, 1793, *Sect.* 5. — *Benares Reg.* 8, 1795, *Sect.* 2.—*Ced. and Cong. Prov. Reg.* 3, 1803, *Sect.* 5

Defendant to be allowed to deliver an answer to the supplemental complaint

A plaintiff may amend the original claim before it has been investigated

327. A plaintiff is at liberty to amend his original claim before it has been investigated — *S. D. A. Sel. Rep.* 27th July 1812, vol. 2, p. 30.

A plaintiff who has omitted any party liable to the claim may include him in a supplementary bill

328. On hearing pleadings, if it appear that plaintiff has omitted any party who may be found liable to the claim, the court may direct the plaintiff to include such party by supplemental bill.—*S. D. A. Sel. Rep.* 10th Dec 1832, vol. 5, p. 242.

Plaintiff and defendant to be permitted to reply and rejoin.

Cases in which defendant is to be allowed to deliver a supplemental answer.

329. In like manner, if the defendant from mistake, inadvertence, or other cause shall have omitted to insert in his answer anything material to his defence, the court, upon his representing, the omission either in person or by his vakeel, is to permit the defendant to deliver in a supplemental answer. The plaintiff and defendant are to reply and rejoin

in the same manner as on the original answer. But no more than one supplemental complaint, or one supplemental answer is to be received by the court.—*Reg. 4, 1793, Sect. 5.*  
—*Benares Reg. 8, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 5.*

Plaintiff and defendant to reply and re-join.

Only one supplemental complaint or answer to be admitted.

The admission of supplemental pleadings

330. No supplemental complaint or other supplemental pleadings shall be admitted in any suit, unless the court, upon a perusal of the pleadings previously filed, and from a consideration of the circumstances alleged by the parties, shall deem it just and proper to admit such supplemental complaint, or other supplemental pleadings to be filed in the suit.—*Reg. 26, 1814, Sect. 6, Cl. 3.*

331. In the event of two or more defendants filing their answers to an action separately, the plaintiff, unless he obtain permission to the contrary, must reply to each within six weeks from the date of its presentation: otherwise he will incur the penalty of default.—*Rep. Sum. Cases, 23d Sept. 1845, p. 71.*

Where defendants file separate answers, the plaintiff must reply to each in six weeks.

332. A practice being believed to be common, though not supported by warrant of any law of the Civil courts, directing the filing of supplemental plants, and stating the points and dictating the terms on and in which they are to be given, the Courts of Sudder dewanny adawlut for the Lower and Western Provinces intimate that such a procedure is to be considered by the courts as strictly prohibited for the future, and that their authority is to be held to extend no further than consists in the allowing one supplemental complaint or answer to be filed on the application of the party wishing to do so, without power to dictate to the parties, or order one to be filed in the absence of such application.—*Cir. Ord. 14th Oct. 1842.*

The court may simply allow one supplemental complaint or answer to be filed.

333. A Civil court cannot, *motu suo*, order supplemental pleadings to be filed, they are admissible only on the application of the party seeking to rectify his error.—*Rep. Sum. Cases, 21st Sept. 1847*

Idem

334. The Sudder dewanny adawlut ordered the refund of the value of a supplementary stamp which was filed by the plaintiff after his suit had, as subsequently proved, been lost by default, and *summarily* altered the amount of vakoufs fees allowed by the lower court.—*Rep. Sum. Cases, 8th July 1844, p. 59.*

Refund of the value of a supplementary stamp filed by the plaintiff after his suit had been lost by default

335. Instances having frequently been brought to the notice of the Court, of substantial injustice having been committed, and needless expence imposed upon parties having suits in the Civil court, by the license assumed by some judicial functionaries, in taking cognizance of matters not set forth in the pleadings, and more especially in giving directions to one or both of the litigants to re-institute proceedings after a particular manner, to include other persons in the suit, and the like, which directions have been often found opposed to legal enactment and practice, and such as to necessitate a nonsuit, the Court desire, that the judicial officers will strictly confine themselves to the adjudication of the point or points at issue between the parties, as set forth by themselves, and that they will bear in mind, that they have no authority to declare judicially, that one or other party is entitled to bring his suit *de novo*, or to point out the form in which it should be revived.—*Cir. Ord. 13th Sept. 1843, par. 1.*

Courts cannot take cognizance of matters not set forth in the pleadings, but must simply adjudicate on the points at issue between the parties as set forth by themselves.

336. If for example, it should be pleaded by the defendant, that the cause of action in any case arose in a jurisdiction other than that in which the suit may be instituted—that the suit has been brought on a wrong valuation, or that lapse of time or any other cause bars

Further explanation of this order

jurisdiction, it will be incumbent on the Judge trying the case, to restrict himself in the first instance to that individual point; and if satisfied of the validity of defendant's objections to nonsuit the plaintiff accordingly, without entering upon the consideration of matters with which, as they cannot be investigated or adjudicated in his court, he can have no occasion to interfere, and without issuing any injunction for the renewal of the suit. In like manner, in hearing appeals, any irregularity in the institution of the suit, or in the proceedings of the Court of first instance, should be observed, an order for retrial of the case without any regard to the merits thereof should issue — *Ibid.*, *par.* 2

Reasons for prohibiting this objectionable practice,

3. The objectionable practice hereby prohibited, is opposed to the obviously correct principle of allowing suitors to bring their suits in such form, and against such persons, as they themselves may judge expedient, and has given rise occasionally to the anomaly of a Judge nonsuiting a case brought conformably to his own directions — *Ibid.*, *par.* 3

order to be obeyed on the subordinate court

338 The Judges will be careful to see that the purport and object of this Circular order is fully and thoroughly understood and strictly observed in practice by all the subordinate judicial functionaries. — *Ibid.*, *par.* 4

The filing of a second supplemental plaint a ground of nonsuit

339 The filing of a second supplemental plaint, although unauthorized by law, is a ground of nonsuit — *Rep. Sum. Cases* 21st April 1845, p. 67

A petition to correct an error in the name of the her of a defendant is not a supplemental plaint

340 A petition filed to correct an error as to the name of the her of a defendant to suit cannot be considered as a supplementary plaint, to which the provisions of Section 5 Regulation 4, 1793, are applicable — *Rep. Sum. Cases*, 8th Jan. 1844, p. 55

Plaintiff to reply to the defendant's answer

341. When the defendant has delivered in his answer to the complaint, the plaintiff is to reply to it on the next court day but he is not to be permitted to introduce in his reply any matter whatever which may not be contained in his complaint, but is either to acknowledge the answer of the defendant to be true, or simply and shortly deny the truth of such of the facts in the answer as he intends to dispute or simply deny the truth of the facts contained in it or the competency of the answer — *Reg.* 4, 1793, *Sect.* 5 — *Rules Reg.* 8, 1795, *Sect.* 2 — *Cod. and Com. Proc. Reg.* 3, 1803, *Sect.* 5

It is unnecessary to reply to a defendant who confesses judgment

342 It is unnecessary to reply to a defendant who confesses judgment. — *Rep. Sum. Cases*, 14th June 1846, p. 80

The defendant need not reply on the next court day, but he must do so within the period of six weeks

343 It being believed that much diversity of opinion exists, in regard to the construction of that part of Section 5, Regulation 4, 1793, (corresponding with Section 5, Regulation 1803) which enacts that "when the defendant shall have delivered in his answer to the complaint, the plaintiff shall reply to it on the next court day," the court are pleased to intimate for general information that the terms above cited have been held, by the majority of the two Courts of Sudder dewanny adawlut, to leave it discretionary with the judicial authorities to admit a replication, even though it be not presented "on the next court day," or, in other words, that, while the law directs the delivery of the replication on the next court day, it does not absolutely inhibit its reception thereafter, provided that it be filed within the period of six weeks, in default of which the suit will of course be liable to dismissal under the imperative provisions of Act XXIX. 1844. — *Cur. Ord.* 2d July 1845.

344. On reference from the Judge of Ghazeepore, as to the proper course to be pursued in the event of a defendant absenting himself, after having filed an answer to a plaint in an original suit :—it was held that under the rule of Section 6, Regulation 4, 1793, and Section 6, Regulation 3, 1803, the proper course would be to affix in the court-house a notice of eight days as therein directed, and in the event of the defendant not appearing within that time, to decide the case *ex-parte*.—*Con.* 1317, *West. C.* 18th Jan, *Cal. C.* 11th Feb. 1842.

Course to be pursued when the defendant absents himself after having filed his answer to the plaint.

345. The defendant is to rejoin to the reply on the same day, but is not to be permitted to introduce in his rejoinder any matter not contained in his answer, but is simply to deny the truth of the reply of the plaintiff, or the parts of it which he means to dispute, and aver the truth or competency of his own answer : and no further pleadings whatever are to be admitted in the cause.—*Reg.* 4, 1793, *Sect.* 5.—*Benares Reg.* 8, 1795, *Sect.* 2.—*Cod. and Cong. Prov. Reg.* 3, 1803, *Sect.* 5.

Defendant to rejoin to the plaintiff's reply. What the rejoinder is, and what it is not to contain

346. Whenever a defendant in an original civil suit shall refuse, or neglect to file a rejoinder within the period prescribed for that purpose, it shall not be necessary for the Register (as hitherto required) to enter a rejoinder for him, but the court before whom the trial may be depending, after recording such refusal or neglect, shall proceed in the trial of the suit in the same manner as if a rejoinder containing a general denial of the claim had been regularly filed.—*Reg.* 26, 1811, *Sect.* 6, *Cl.* 2.

Registers not required to file a rejoinder when the defendant may refuse or neglect to do so

347. In the trial of original regular suits, as well as in the trial of appeals in such suits, the prescribed pleadings shall be completed and read in open court, before any exhibits are filed, or witnesses summoned in support of the allegations of either of the parties unless special and sufficient reason be assigned for taking the immediate deposition of a witness without waiting until the pleadings are completed and read in open court.—*Ibid.*, *Sect.* 10, *Cl.* 1.

Pleadings to be read before exhibits are filed or witnesses summoned

Exception

## SECTION XVI.

### *Zillah and City Courts—Dismissal of the Suit from the Default of the Plaintiff.*

348. If a plaintiff shall at any time neglect to proceed in his suit for six weeks the suit is to be dismissed, unless he can shew good and sufficient cause to the court for not having proceeded in it; and the court is to award to the defendant the whole or such part of the costs as he may have incurred in the suit, according as it may deem equitable. The Judge is to record upon the proceedings his reasons at large for dismissing the suit of a plaintiff, or allowing him to prosecute it, after he shall have neglected to proceed in it for six weeks.—*Reg.* 4, 1793, *Sect.* 10.—*Benares Reg.* 8, 1795, *Sect.* 2—*Cod. and Cong. Prov. Reg.* 3, 1803, *Sect.* 12.

Suits of plaintiffs who neglect to proceed in them for six weeks to be dismissed unless they can show good cause for not having proceeded

Judge to record upon the proceedings his reasons for the exercise of the powers vested in him by this section

349. With respect to regular suits dismissed under Section 10, Regulation 4, 1793, the Zillah and City courts were informed by a circular notice from the Sudder dewanny adawlat, under date the 22d August, 1795, that the plaintiffs in causes dismissed under this rule have the option of reinstating them under the Regulations.—*Con.* 266, 19th Feb. 1817.

Causes dismissed under the above section may be reinstated by plaintiffs.

Plaintiff or appellant neglecting to proceed for 6 weeks, suit or appeal to be dismissed, without previous notice unless further time has been previously obtained on special grounds. The court shall record its reasons for giving further time, but not for refusing it.

350. It is hereby enacted, that if a plaintiff or appellant in any court shall at any time neglect to proceed in his suit or appeal for six weeks, the suit or appeal shall be dismissed; and it shall not be necessary to give the plaintiff or appellant any notice previous to dismissing his suit or appeal. The suit or appeal shall be dismissed as of course after the expiration of six weeks without any proceeding on the part of the court, or of the defendant, or otherwise, or assignment of any reasons, unless the plaintiff or appellant, or his representative in case of his death, upon special application, shall have previously satisfied the court of the propriety of allowing further time. The court shall record upon the proceedings the reasons at large for allowing further time in all cases in which further time may be allowed, but it shall not be necessary to specify the reasons for refusing any application for further time.—*Act XXIX. 1841. Sect. 1.*

Defendant or respondent to have costs if suit or appeal is dismissed

351. And it is hereby enacted, that in all cases in which a suit or appeal is dismissed under the preceding section, the court shall award to the defendant or respondent the costs he may have incurred in the suit or appeal. But such dismissal shall be no impediment to the institution of a new suit or appeal, where the party is not precluded by lapse of time, or period of appeal, or otherwise than by the mere circumstances of having instituted the suit or appeal dismissed, and of such dismissal, and such dismissed suit or appeal shall not prevent lapse of time under the law of limitation being incurred.—*Ibid. Sect. 2.*

Repeals cl. 2, sec. 27, reg. 23, 1814, of the Bengal code, and cl. 2, sec. 26, reg. 6, 1816, of the Madras code. Enacts.—No appeal against dismissal of a suit or appeal, other than a summary appeal on the fact of default shall be allowed.

352. And it is hereby enacted, that Clause 2, Section 27, Regulation 23 of 1814 of the Bengal code, and Clause 2, Section 26, Regulation 6 of 1816, of the Madras code are repealed; and no appeal shall lie against the decision passed in accordance with the provisions of the preceding clauses of this Act, other than a summary appeal on the fact of default.—*Ibid. Sect. 3.*

Act 29, 1841 applies to all suits pending at the date of its promulgation.

353. With reference to the provisions of Act XXIX. of 1841, I am directed to observe that you should consider them as applicable to all suits pending on your file at the date of the promulgation of the Act, in which parties may neglect to proceed with them for a period of six weeks from such date, which is to be calculated from the day of the receipt in your office of the *Calcutta Gazette* containing the Act, or of the printed copy of the Act itself, as the case may be. The Act will of course apply to all suits instituted after the date of its promulgation. You are requested to lose no time in making the Native Judges acquainted with the foregoing orders.—*Cir. Ord. 24th Dec. 1841.*

The interval of the established vacations not to be deducted in calculating the period of default.

354. Held, on a reference from the Judge of Cawnpore, in adoption of the rule of Circular order of the Sudder dewanny adawlut, No. 25, dated 7th January, 1831, that the interval of the established vacations, must not be allowed to be deducted, in the calculation of the period beyond which default is incurred under Act XXIX. of 1841.—*Con. 1368, West. C. 2d, Cal. C. 23d Dec. 1842*

355. The Court have had instances before them in which plaintiffs have been allowed to file documents, and lists of witnesses, and to do other acts in prosecution of their suits, after they had incurred the penalty of default under Act XXIX. of 1841. There is reason also to believe that the appearance of regular suits and miscellaneous cases on the file, after the lapse of

one year from the date of institution, is generally attributable to delays, which methodical regularity in preparing them for decision might obviate. With a view to prevent such irregular revival of suits, which had become extinct by default, and expedite the transaction of civil business, as far as may be practicable, consistently with a just regard to the requirements of law, the following rules are promulgated for the guidance of the civil Judges and their subordinates :

—*Firstly*, No order for the filing of pleadings, or presentation of exhibits, for the issue of legal process, whether of notice to the defendant, or proclamation, or subpoena for the attendance of witnesses, or for production of papers from the record, shall be passed without the simultaneous assignment of a specified period for its fulfilment ; provided, of course, that the order, whatever its object and purport, be susceptible of execution within a given period ; and, provided, that by existing enactments no fixed period is allowed for such execution.—*Secondly*, To the record of every pending suit or miscellaneous case, shall be prefixed a fly leaf, on which shall be inscribed the title of every paper filed, in the order of its presentation relatively to dates, with the date of such presentation, and of the order recorded, and specification of the period which may have been allowed for the fulfilment of that order.—*Thirdly*, On the expiry of that period, without execution of the order to which it relates having taken place, it shall be the duty of the Serishtadar, or other ministerial officer, to bring the fact to the notice of the presiding authority, and to lay the record of the case before him, for such instructions as he may be pleased to issue.—*Fourthly*, It shall be the duty of the Serishtadar, or other ministerial officer, to lay before the court the record of every suit in which the period of six weeks may have expired, since the last act done by the plaintiff in prosecution of his suit, in order that the necessary order for striking the suit off the file may be passed, agreeably to Act XXIX. 1841.—*Fifthly*, The Judges, both covenanted and uncovenantd, are expected, before admitting any document on the part of the plaintiff, or permitting him to do any act in prosecution of the suit, to ascertain that no default, rendering the dismissal of the suit necessary, has been committed.—*Civ. Ord. 3d Jan. 1845, par. 1.*

356. A strict adherence to these rules will have a beneficial effect, it is believed, in bringing to light default or neglect on the part of suitors, by reference simply to one paper, and will thus afford easy and efficient means of counteracting their dilatoriness ; while, at the same time, it will enable the judicial authorities to discover at once, and reprehend irregularity and want of method on the part of their subordinates. The controlling power of the civil Judges over the Moonsiffs, and other functionaries subject to their supervision, will be similarly enlarged, and its exercise facilitated, for, should undue protraction of any suit or miscellaneous case be apprehended, he may, by requiring a copy of the fly leaf, and examining it, ascertain how the delay has occurred, and to whom it is to be ascribed.—*Ibid, par. 2.*

357. The judicial agency now employed is large, and is believed to be composed generally, of men well educated, intelligent, and efficient ; and the Court are of opinion that, except under very peculiar circumstances, no suit should remain undetermined twelve months from the date of its institution, and but few should appear on the file after the expiry of six months. To this point, therefore, the Court will in future specially refer, as an indication of the degree of diligence and judicial ability brought into exercise in the conduct of the civil administration of each district.—*Ibid, par. 3.*

358. Section 1, Act XXIX. of 1841, enacts that a “ suit or appeal shall be dismissed, as of course, after the expiration of six weeks without any proceeding on the part of the court or

1. No orders shall be passed for filing papers or issuing process without assigning a period for its fulfilment, if susceptible of execution in a given time and no period is fixed for its execution by law.

2. A fly leaf to be added to the record of cases on which is to be inscribed the title of papers filed, and the date of filing, the order passed and the time allowed for fulfilling it.

3. If the period expires without the execution of it, the serishtadar will report the matter to the ct.

4. The serishtadar will submit the record of every suit in which there has been default.

5. The court before admitting any document, or permitting the plaintiff to go on with the suit will see that there has been no default.

Advantages of strictly attending to these rules.

The S. D. A. expect that hereafter no suit will remain undetermined for 12 months, and few after 6 mos

Recapitulation of Act 29, 1841, sec. 1.



of the defendant or otherwise, or assignment of any reasons, unless the plaintiff, or appellant, or his representative in case of his death, upon special application, shall have previously satisfied the court of the propriety of allowing further time."—*Cir. Ord. 5th Sept. 1845, par. 1.*

Thus law, however, does not prohibit the courts' notifying to the heirs the fact of the decease of a plaintiff

359. The Courts of Sudder dewanny adawlut for the Lower and North-Western Provinces having had occasion to deliberate as to the force of these expressions, the majority are of opinion that while they are unambiguous in requiring the representative of a deceased plaintiff or appellant, previous to the expiry of the six weeks in which a certain prescribed act is to be performed, to move the court for an extension of that limited period; and while they admit of no interpretation, by which an intermediate act on the part of the court, notifying to the heirs the fact of the decease of the plaintiff or appellant, can by implication be held to be required, they are not actually *prohibitory* of the court doing of its own mere motion, *previous* to the expiry of the six weeks aforesaid, such act of procedure, as the general powers of the court enable it to do—*Ibid, par. 2.*

It is not just that the penalty should be inflicted where there is no possibility of avoiding default.

360. The majority of the two courts further observe, that, in so far as "dismissal on default" is enacted as a penalty on the defaulter, it is not just that that penalty should be inflicted in cases where there exists a moral and physical impossibility of avoiding it, viz. when the date of the plaintiff's or appellant's decease is so near the date when default would occur, and the heir or representative at the same time so distant from the place, where the decease took place, as to render it an impossibility that he should fulfil the law's requirements. The right of appeal would thus, in numerous instances, be lost altogether, and manifest injustice be done by the law. But it is a maxim that law never enacts an impossibility, and the Court therefore conceive it imperative upon them, in pursuance of their legal privilege to act according to justice, equity, and good conscience, to prevent the injustice, that would be involved in the infliction of a penalty for failure to perform an impossible act by the institution of a rule of procedure, fitted at least to remove the impossibility of the heir of a deceased party being in court, if he be desirous to prosecute the suit—*Ibid, par. 3.*

The following rule of practice is, therefore, prescribed

361. The Court are pleased, therefore, to prescribe the following rule of practice for the guidance of all the judicial authorities, and to intimate for general information, that it will be followed in the Sudder dewanny adawlut henceforth: 1stly, Whenever it may be certified to a zillah or city Judge, Principal Sudder Ameen, Sudder Ameen, or Moonsiff, that a plaintiff or appellant, in any original suit or appeal, pending in the court of such zillah or city Judge, or Principal Sudder Ameen, Sudder Ameen, or Moonsiff, has deceased, the presiding officer of such court shall be at liberty, if he deem it just and proper, to notify the fact in a publication to be affixed in his own cutcherry, and in the cutcherries of all the judicial authorities and the Collector of the district. The publication shall contain a statement of the several depending cases, in which such plaintiff or appellant was a party, and an intimation to his heirs or representatives, that, unless they attend either in person or by vakeel for the prosecution of the depending suit or appeal before a certain day, to be fixed and named in the publication not being more than six weeks from its date, such suit or appeal will be dismissed on default under the provisions of Section 1, Act XXIX. of 1841. 2ndly, The above rule of practice shall be considered equally applicable to appeals, pending in the Court of Sudder dewanny adawlut, with the exception, that the publication therein prescribed shall, in such cases, be affixed in the cutcherry of the sudder court, and in the cutcherries of the several judicial authorities included in the district or districts from which the depending appeals may have been received, and that

When a plaintiff dies, the court will notify the fact in a notice to be fixed in its own cutcherry and every other throughout the district

What the notice is to contain.

Notice to be affixed in regard to cases pending in the S. D. A.

the zillah and city Judges shall, on receipt of a precept to that effect, cause the said publication to be duly affixed in the places appointed, and certify, with all practicable expedition, the due fulfilment of such order for the satisfaction of the court.—*Ibid*, par. 4.

362. A form of publication is annexed for general use, and the civil Judges are informed, that lithographed forms of the same may be indented for on the Government Lithographic Press.—*Ibid*, par. 5.

Form of notice.

نمودہ اشتہار بعرض اعلان خبر فوت بعض از متخاصمین مقدم  
حکم اشتہار عدالت دیوانی فلان اینکہ واسطے حاضری قائم مقام شخص  
متوفی کے جسکا نام فہرست مصرعہ ذیل میں مندرج ہے خبر فوت شخص  
مذکور اور ضروری حاضری قائم مقام اسکے ہی شماری دیجاتی ہے جو کوئی کہ  
ادعائے وراثت اور قائم مقامی اور استحقاق پیروی مقدمہ کا بجای متوفی  
مذکور کے رکھتا ہو اسکو چاہئے کہ قبل تاریخ معینہ کے عدالت مذکورہ  
بالا میں اصلنا یا بذریعہ وکیل یا مختار حسب ضابطہ کے حاضر ہو کے لوازم  
پیروی مقدمہ عمل میں لاوے ورنہ رٹیکہ مابین مینماو مذکورہ حاضر نہ ہوگا یا  
بجالت حاضری مابین اس مصلحت کے جو از تاریخ حاضری حسب قانون اسکو  
حاصل ہو امور واجب النعمیل کو سوانحنام نہ کریگا توجو حکم کہ اصدار اسکا بجالت  
پیروی مقدمہ از جانب متوفی مذکور از روی قانون ضابطہ عدالت کے مناسب  
ہونا صادر ہوگا اور بعد اسکے کوئی عذر و عویدار قائم مقام متوفی مذکور کا  
مسموع نہ کیا جائیگا

نمبر مقدمہ نام متخاصمین بیان سے دعوی اشیای اشخاص تاریخ معینہ جسکا  
زید و عمر وغیرہ بابت زر نقد از متوفی بقید ذکرین اشتہار  
اپیلاستان رسپا روی تمسک بصط مدعی میں مندرج ہے  
نڈن احمد و یا اپیلاست دوسری فہروری  
نمبر ۳ محمود وغیرہ زاید اپیلاست سنہ ۱۸۳۵ ع ۱۸۳۵  
تہی فلان روز فلان

Where govt. is a co-deft, the plaintiff need not move in the case till the answer of govt. is given in

363. If Government be a co-defendant in a suit, the plaintiff need not, after filing the plaint, take any steps in prosecution of the case, till the answer of Government be given in.—*Rep. Sum. Cases, 24th Nov. 1845, p. 72.*

Failure of plaintiff to reply to one defendant without neglect or default regarding other defendants does not involve dismissal under act 29, 1841.

364. Held that the failure of the plaintiff to reply to the answer of one defendant, within the prescribed time, while the case was proceeding without neglect or default in regard to other defendants, does not constitute the neglect involving dismissal of the action under Act XXIX. 1841.—*S. D. A. Sel. Rep. 7th Feb. 1846, vol. 7, p. 226.*

A mere omission to do a particular act, while the plaintiff is conducting his suit, does not incur dismissal under act 29, 1841.

365. A mere omission to do a particular act, while the plaintiff is otherwise engaged in carrying on his suit, does not incur the penalty of dismissal under Act XXIX. 1841.—*Rep. Sum. Cases, 11th May 1847.*

The absence on leave of a pleader is no bar to dismissal under act 29, 1841.

366. The absence on leave of a pleader engaged in a cause, is no bar to its dismissal under Section 1, Act XXIX. 1841.—*Rep. Sum. Cases, 2d Aug. 1842, p. 36.*

Where the receiver of the Supreme Court is a party, no fresh notice is required on a change of the official incumbent.

367. It is not necessary to issue, to the new officer, fresh notice in a case to which the receiver of the Supreme Court may be a party on change of the official incumbent.—*Rep. Sum. Cases, 18th March 1845, p. 66.*

The S. D. A. ordered the refund of the supplementary stamp filed by the plaintiff after a suit had been lost by default.

368. The Sudder dewanny adawlut ordered the refund of the value of a supplementary stamp which was filed by the plaintiff after his suit had, as subsequently proved, been lost by default, and *summarily* altered the amount of vakils' fees allowed by the lower court.—*Rep. Sum. Cases, 8th July 1844, p. 59.*

Neglect of an order, while the suit is in progress, is not a default.

369. Neglect of an order issued in the progress of a suit, which is otherwise carried on is not a default under Act XXIX. 1841.—*Rep. Reg. Cases, 10th May 1847.*

A suit cannot be dismissed on its merits and for default.

370. A suit cannot be dismissed both on its merits, and on account of default under Act XXIX. 1841.—*Rep. Sum. Cases, 31st July 1847.*

## SECTION XVII

### *Zillah and City Courts—Notification of the points to be established in the case.*

Courts to require any necessary explanations of the case from the parties as then pleaders.

371. If from the pleadings in the case the points at issue cannot be clearly ascertained, or if from any other reason further explanations may be requisite, the courts shall on the day, on which the suit may be first brought to a hearing, make such enquiries from the parties or their pleaders as may appear necessary, with a view to ascertain the precise object of the action, and the grounds on which it is maintained, and shall record the result on their proceedings.—*Reg. 26, 1814, Sect. 10, Cl. 2.*

The court will strictly confine itself to the points at issue between the parties as set forth by themselves. The court cannot declare judicially that either party

372. Instances having frequently been brought to the notice of the Court, of substantial injustice having been committed, and needless expence imposed upon parties having suits in the Civil court, by the license assumed by some judicial functionaries, in taking cognizance of matters not set forth in the pleadings, and more especially in giving directions to one or both of the litigants to reinstitute proceedings after a particular manner, to include other persons in the suit,

and the like, which directions have been often found opposed to legal enactment and practice, and such as to necessitate a nonsuit, the Court desire, that the judicial officers will strictly confine themselves, to the adjudication of the point or points at issue between the parties, as set forth by themselves and that they will bear in mind that they have no authority to declare judicially, that one or other party is entitled to bring his suit *de novo*, or to point out the form in which it should be revived.—*Cir. Ord. 13th Sept. 1843, par. 1.*

373. If, for example, it should be pleaded by the defendant, that the cause of action in any case arose in a jurisdiction other than that in which the suit may be instituted—that the suit has been brought on a wrong valuation, or, that lapse of time or any other cause, bars jurisdiction, it will be incumbent on the Judge trying the case to restrict himself in the first instance to that individual point; and if satisfied of the validity of defendant's objections, to nonsuit the plaintiff accordingly, without entering upon the consideration of matters with which, as they cannot be investigated or adjudicated in his court, he can have no occasion to interfere and without issuing any injunction for the renewal of the suit. In like manner, if in hearing appeals, any irregularity in the institution of the suit, or in the proceedings of the Court of first instance, should be observed, an order for re-trial of the case without any regard to the merits thereof should issue.—*Ibid, par. 2.*

The plea of the defendant to be disposed of in the first instance.

374. The objectionable practice hereby prohibited is opposed to the obviously correct principle of allowing suitors to bring their suits in such form, and against such persons, as they themselves may judge expedient, and has given rise occasionally to the anomaly of a Judge nonsuiting a case brought conformably to his own directions.—*Ibid, par. 3.*

If in appeal, there appears to have been any irregularity in the lower court, the case must be ordered to be re-tried.

Anomaly created by any court's departing from these rules and interfering with suits.

375. The Judges will be careful to see that the purport and object of this Circular order is fully and thoroughly understood and strictly observed in practice by all the subordinate judicial functionaries.—*Ibid, par. 4.*

This circular to be explained to and enforced on the subordinate courts.

376. The Court request that an error detected in the second paragraph of their Circular order, No. 33, dated 13th September, 1843, may be corrected by the insertion, after the word "accordingly," occurring in the 6th line of the printed edition, of the words "or to dismiss the suit, as the case may be."—*Cir. Ord. 27th Aug. 1845.*

Correction of an error in par. 2 of the above circular.

377. The Court shall then consider and record the point or points to be established respectively by the plaintiff or appellant, and by the defendant or respondent, and shall proceed to take the evidence which may be adduced by either party upon such points in the manner prescribed by the rules in force.—*Reg. 26, 1814, Sect. 10, Cl. 3.*

The courts to record the points necessary to be established by the parties

378. In like manner if proof shall be required on any other points in the course of the trial, such points shall be recorded on the proceedings, and the proper party shall be called upon for the requisite evidence, and no exhibit shall be filed, or witness summoned, unless expressly declared to be in proof, or refutation of some point, upon which the court may have directed that evidence should be taken.—*Ibid, Cl. 4.*

And any additional points which may subsequently appear necessary

And no evidence to be admitted except with regard to the points so recorded

379. A strict observance of the rules abovementioned, especially of those contained in Section 10, Regulation 26, 1814, with a view to ascertain the precise object of the action; the grounds on which it is maintained; and the point or points to be established by the parties respectively, when the suit is first brought to hearing after the pleadings are completed, and before

The courts are enjoined to pay particular attention to the rules given above in reg. 26, 1814, sec. 10.

any exhibits are filed, or witnesses summoned being of great importance towards the prevention of superfluous matter, and unnecessary delay, in the trial and decision of civil suits, the Judges and Registers of the Zillah and City courts, as well as the Judges of the Provincial courts, are required to give particular attention thereto, in the suits which may come before them respectively.—*Cir. Ord. 7th Aug. 1817.*

The judges are invariably to submit in appealed cases, the proceeding required in reg 26, 1814, see.

380. Several instances having lately been brought to the notice of the Court of the record of appealed cases, submitted agreeably to the rule contained in Section 8, Regulation 9 1831, being sent up without the proceeding which the Judge is required to draw up by Section 10, Regulation 26, 1814, and the omission being extremely inconvenient, particularly where the appellant pleads that the Judge has omitted to receive documents tendered, or to summon witnesses named by the party; I am directed to request that you will invariably submit that proceeding in appealed cases that you may forward to the Court.—*Cir. Ord. Cal. and West. C. 5th Aug 1836*

## SECTION XVIII.

### *Zillah and City Courts—Notice to the Parties to file Exhibits and name Witnesses.*

When the courts are to proceed to the examination of the merits of the suit

381. When the rejoinder has been filed, the court, either immediately, or on a fixed day (eight days' notice of which is to be given to the parties) as soon after the pleadings are closed as the business of the court will permit, is to examine the truth of the complaint or claim by the oaths of the parties, if they mutually consent to that mode of examination, and of the witnesses who may be produced by them, if they have any witness to produce.—*Reg. 4, 1793, Sect. 6. --Benares Reg. 8, 1795, Sect. 2.—Ced. and Conf. Prov. Reg. 3, 1803, Sect 7.*

Previous notice to be given by the courts of the day, on which a suit is to be brought to a hearing

382. In order that the parties in a suit or their authorized pleaders may be fully prepared to file their exhibits, and to name their witnesses, as well as to furnish any explanations of the case, which may be required, at the time when the suit may first be brought to a hearing, the several courts are enjoined carefully to attend to those provisions in the Regulations which require that eight days' previous notice be given to the parties of the day on which the court may propose to bring the suit to a hearing.—*Reg. 26, 1814, Sect. 12, Cl. 1.*

A notification of the day duly affixed in the cutcherry, shall be a sufficient notice

383. For this purpose it shall be sufficient for the court to affix, in some conspicuous place in the court-room, a notification, specifying the number of the suit, the names of the parties and of the vakeels respectively entertained in the suit, together with the date on which it may be intended that such suit be brought to a hearing before the court, and such notice shall be held and considered to be in force until the suit can be brought to a hearing either on the day fixed or any subsequent day.—*Ibid, Cl. 2.*

Courts authorized to fine parties who may be unprepared to file exhibits or to name their witnesses

384. If either of the parties in a suit, which may be brought to a hearing after due notice shall have been given in the manner above proscribed, shall not be prepared to file their exhibits, or the names of their witnesses, or to furnish any explanations of the case

which may be required by the court, and shall not assign sufficient and satisfactory reason for the delay, the courts are authorized to impose upon such parties such fine as may appear just and proper: provided that the fine shall in no instance exceed one-fourth of the fee paid on the institution of the suit, or of the amount of the stamp duty substituted for such fee. If a similar neglect shall occur a second time after due notice shall have been given of the day fixed for the case being again brought forward, the courts are authorized either to impose a second fine under the limitation above prescribed, or to proceed as in other cases of default.—*Ibid*, Cl. 3.

for the hearing of the suit.

385. A case having been decided by the Principal Sudder Ameen and zillah Judge entirely by a reference to the records of other cases previously decided, the Sudder dewanny adawlut set aside both decisions, and remanded the case with instructions that the plaintiffs should be required to file the evidence necessary to support their claims.—*S. D. A. Sel. Rep.* 22d Aug. 1813, vol. 7, p. 130.

A civil court cannot decide a case by a reference to the records of other cases previously decided; the plaintiffs must be required to file the evidence necessary to support their claim.

386. Held, that the eight days' notice required by Section 12, and the proceedings to be recorded under Section 10, Regulation 26, 1814, must be repeated, if the parties to a suit be allowed to file any pleadings subsequently to the above provisions of the law having been once already attended to.—*Rep. Sum. Cases*, 19th Feb. 1815, p. 65.

Case in which the notice of 8 days must be repeated

387. Held, that a Judge is not authorized by Clause 3, Section 12, Regulation 26, 1814, to fine a defendant one-fourth of the value of the stamp required for the petition of plaint, for failing to produce certain documents, the recovery of which by the plaintiff formed the subject of action.—*Rep. Sum. Cases* 7th Sept. 1811, p. 17.

Cases in which a judge is not authorized to fine a defendant by reg. 26, 1814, see 12, cl. 3.

## SECTION XVIII

### *Evidence in Zillah and City Courts*

388. It is hereby enacted, that no person shall, by reason of any conviction for any offence whatever, be incompetent to be a witness in any stage of any cause, civil or criminal, before any court, in the territories of the East India Company.—*Act XIX.* 1837.

No one disqualified to be a witness by reason of a conviction for any offence

389. In reply to your letter of the 27th ultimo, I am directed by the Courts of Sudder dewanny and Nizamut adawlut to inform you that the fact of a witness being afflicted with leprosy does not bar the admission of his evidence in our Courts of justice.—*Con.* 726, 26th Oct. 1832.

A witness afflicted with leprosy is not barred from giving evidence

390. It is irregular in a court to examine one of the defendants in a suit as a witness in proof of the plaintiff's claim.—*S. D. A. Sel. Rep.* 2d Dec. 1813, vol. 7, p. 111.

A defendant cannot be examined to prove the plaintiff's claim

391. In the case of an appeal defended by the assignees of an insolvent firm, appointed under the 9th George IV. chapter 73, the evidence of one of the partners was received in appeal.—*S. D. A. Sel. Rep.* 5th March 1833, vol. 5, p. 271.

Case in which the evidence of one of the partners was received in appeal

392. A person who gives a bribe cannot be compelled to give evidence on oath touching the bribe alleged to have been administered by him as he would himself be liable to a criminal prosecution for giving it.—*Con.* 757, 29th Feb. 1833.

One who gives a bribe cannot be examined on oath regarding it

The courts possess authority to require mahajuns to produce their books in evidence.

393. The Court observe that although no specific Regulation exists on the subject, it has been the established practice of the courts to call on mahajuns to produce books in evidence on cases pending before them, and they have reason to believe that such practice has been held by the Presidency Court to be unobjectionable. The Court therefore propose to inform the Commissioner, with the Presidency Court's concurrence that although the measure should be adopted with caution, and not unnecessarily, still the courts possess authority to require mahajuns to produce their books in evidence when an inspection of them may be necessary for a full understanding of the merits of a case pending before them.—*Con* 757, *West. C.* 8th Feb. 1833

What evidence has been received as proof of an unconditional sale

394. An action for possession of real property on a sale *absolute*, but in reply to which defendants pleaded a conditional sale. The plaintiff could not produce a bill of sale, but the return by defendants to plaintiff of the ikranamahs drawn out when the sale was only conditional, held to be conclusive proof of an unconditional sale.—*S. D. A. Sel. Rep.* 19th Sept 1844, *vol* 7, p. 181

The accounts of a govt officer must be proved

395. Held that the accounts of a Government officer require to be proved as those of an individual.—*S. D. A. Sel. Rep.* 24th May 1844, *vol* 7, p. 170

An act proved in a criminal court being the ground of a civil action, the civil court cannot refuse evidence to disprove it

396. An act proved in a Criminal court being made the ground of a civil action evidence offered in its disproof cannot be refused by the Civil court.—*S. D. A. Sel. Rep.* 19th Nov 1844, *vol* 7, p. 216

A deed of gift drawn in Calcutta on unstamped paper, not admissible as evidence in the Company's courts

397. Under Regulation I 1814, a deed of gift drawn on unstamped paper by an attorney in Calcutta for the conveyance of property at Moorshedabad, the donor being at the time, resident of Calcutta, and the donee a resident of Moorshedabad, is not admissible as evidence in the Company's courts.—*Con* 312, 1st April 1820.

Documents on proper stamp not admissible as evidence, but the courts may receive other evidence of the claim

398. Document written on paper not bearing the prescribed stamp shall not be admitted as evidence or filed in any Court of justice, but if the plaintiff can prove his claim by any other evidence the Courts of justice are not precluded from receiving such evidence.—*Con* 292, 9th July 1818

Plaintiff may produce other evidence if his security bond is inadmissible as being on plain paper or an improper stamp

399. When a security bond has been declared inadmissible as evidence in consequence of its being written on plain paper or on paper bearing an improper stamp, the plaintiff may adduce other evidence of the security having been given.—*Con* 970, *Cal. C.* 7th Aug., *West. C.* 4th Sept 1835.

Documents on plain paper in connection with the insolvent court admissible as evidence

400. Documents executed on plain paper under Section 79 of the Act for the relief of insolvent debtors, (19th Geo. 4th C. 73) are admissible as evidence in the Company's courts without being stamped.—*S. D. A. Sel. Rep.* 15th Sept 1842, *vol* 7, p. 118.

The collector's receipt for the stamp penalty not enough to legalize a document, it must be stamped

401. The Collector's receipt for the amount of the penalty is not sufficient to legalize a document. It must be submitted to the Superintendent to be stamped.—*Con* 6, 3d April 1805

## SECTION XIX

### *Witnesses in Zillah and City Courts.*

No witness to be

402. Petitions or applications for the summoning or examination of witnesses, ac-

according to the number of persons named, will be charged for stamps as exhibits, and no witness shall be summoned or examined in a regular suit, unless his name is included in a petition or application in writing given in as above.—*Reg. 10, 1829, Sch. B, Art. 11.*

403. On a reference from the Judge of Zillah Bundelkund, dated 13th May, (paragraph 2,) "whether parties may be allowed to bring their own witnesses without making any application to the court, or whether it is intended that an application on stamped paper shall be made for every witness, whether summoned by the court, or offered to be produced by the parties;" the Sudder dewanny adawlat gave it as their opinion, the 17th August, 1814, "that no witness could be examined in a regular suit without a dukhaust, as prescribed by the last stamp Regulation."—*Con. 182, 17th Aug. 1814.*

examined unless his name is included in an application. The value of the stamp on which it must be written

Though a party brings his witnesses without a summons, they cannot be examined without a written nomination for each on stamped paper.

404. I am directed to observe that Section 3, Regulation 7, 1832, modifies Schedule B, Regulation 10, 1829 only so far as relates to the value of the stamp on which "pleadings" in suits in the Judge's court shall be written, and that all "ism nuveesee" or the names of witnesses must as heretofore be charged as "exhibits" and written on stamped paper of the value one rupee (see Articles 5 and 11, Schedule B)—*Con. 1088, Cal. C. 21st April West C. 12th May '37.*

All *ism nuveesee* must be written on a stamp value 1 rupee.

405. Concerning the attendance of witnesses the Zillah and City Courts, on the requisition of the plaintiff or defendant or their respective vakeels, are to issue a summons to the witnesses when the parties may agree provided they be not Hindoo or Mahomedan women of a rank or quality which according to the manners and customs of the country would render it improper to compel them to appear in a Court of justice—specifying at whose request the summons may have been issued and requiring them to appear in the court on a day to be named in the summons, and there to depose concerning the matter in dispute between the parties.—*Reg. 4, 1793, Sect. 6—Bombee Reg. 8, 1795, Sect. 2 Cal. and Comp. Proc. Reg. 3, 1803, Sect. 7.*

How the attendance of the witnesses of the parties is to be procured, provided they be not women of the rank or cast here mentioned.

What the summons is to contain.

406. A party to an action cannot be called upon to point out the witnesses named by the opposite side.—*Rep. Sum. Cases, 22d Sept. 1836, p. 74.*

A party to an action cannot be called to point out the witnesses named by the opposite side.

407. There is no legal bar to the managing agent of one of the parties to a civil suit being summoned and examined as a witness on the motion of the opposite party.—*Remarks.*—The agent in the above case was not a broker employed in the courts, but an agent for the management of the property of his principal.—*Rep. Sum. Cases, 22d Sept. 1836, p. 12.*

The managing agent of a party may be examined as a witness.

408. The Court of Sudder dewanny and Nizamat adawlat have been advised that an extract from the proceedings of Government in the Territorial department, under date the 9th May last, relative to persons exempted from the ferry toll, established by Regulation 19, 1816, has been transmitted to the several Courts of justice, for their information. I am further directed to acquaint you, that the several revenue authorities have been instructed by Government "to consider the principle of the orders contained in that extract to extend to witnesses summoned to attend the Courts of justice."—*Cr. Ord. 31st July 1817.*

Witnesses summoned to attend the courts exempted from the ferry toll.

409. If a witness so summoned shall not attend on the day appointed, or attend ing, shall refuse to give evidence, or to subscribe his deposition as hereafter required,

How witnesses so summoned are to be dealt with, if they



shall not appear, or if they shall appear and refuse to give evidence or subscribe their deposition

the Judge, in the first case, if it shall be proved to his satisfaction on oath that the witness was material to the cause, is to issue an order to the nazir to seize and bring the witness before the court, and is to impose on such witness not having attended, or refusing to give evidence, a fine not exceeding five hundred rupees, and to commit him to close custody, until he shall consent to give his evidence and sign his deposition. — *Reg. 4, 1793, Sect. 6. — Benares Reg. 8, 1795, Sect. 2. — Ced. and Conq. Prov. Reg. 3, 1803, Sect. 7*

Zillah and city magistrates and courts of circuit and nizamat adawlat empowered to commit to custody and fine witnesses not attending or refusing to give evidence, or to sign their deposition

410 But witnesses attending and refusing to give evidence, whether in the Civil or Criminal courts, shall in the first instance, be committed to custody only; and shall be called upon a second time, after such interval as may by the court be judged sufficient, (not being less than one entire day,) when if the witness persist in his refusal to give evidence, he shall be fined in proportion to his situation in life (not exceeding the amount limited) and confined in the jail of the Civil court, until the fine be discharged, or for such period of imprisonment as may be fixed in lieu of the fine, under Section 3, Regulation 14, 1797; or, if the cause of fact, in which the evidence of the witness may be requisite shall be still depending, until he shall consent to give his evidence thereon, after which, in such case, he shall be released and the fine remitted. — *Reg. 50, 1803, Sect. 2, Cl. 2.*

Course of procedure regarding witnesses fined, or committed, for refusing to swear

411 No limitation is fixed for the confinement which the court may award in commutation of fines adjudged in cases of refusal to make oath, &c. The court must exercise its discretion according to the circumstances of each case. A witness fined for refusing to swear is to be discharged on paying the fine, if the suit in which his evidence was required have been decided; or kept in confinement, whether he have paid the fine or not, if the suit be still pending, until he consent to give his evidence on oath as required. — *Con. 110, 3d Sept. 1812.*

A witness fined on refusing to swear cannot be admitted to give evidence without oath after paying the fine, except at the discretion of the Judge

412. A witness who has been fined for refusal to take an oath cannot, after discharging the fine, be admitted to give evidence on solemn declaration, unless the Judge, who imposed the fine, see reason to change his opinion that the prisoner was not, in the first instance, a fit object of exemption from taking an oath, in which case the fine may be remitted, and the witness admitted to give his evidence on a *huk:fnamch* — *Ibid.*

There must be proof on oath that the evidence of a witness, who has been summoned but does not attend, is material, in cases in which such proof is not required.

413. In answer to a reference made by the Judges of the Calcutta Court of circuit, the Nizamat adawlat, on the 19th of May, 1811, stated it as their opinion, that this clause, which requires proof on oath (not the prosecutor's oath exclusively) that the evidence of a witness is material to the cause, is exclusively applicable to the first case therein mentioned, viz. that of a witness duly summoned and not attending; and that in the two other cases mentioned, viz. of a witness attending and refusing to give evidence, or after having given evidence refusing to sign his deposition, no new proof is to be called for that the evidence of the witness is material. — *Con. 159, 19th May 1811.*

The judge cannot strike a case off the file, when the plaintiff's witnesses are summoned and do

414. In a regular suit, in which the witnesses named by the plaintiff had been duly summoned, but had neglected to attend under the summons and give their evidence as required, it was held by the Calcutta Court, in concurrence with the Western Court, that it was incum-

bent on the Judge, under the spirit of Section 6, Regulation 4, 1793, to call on the plaintiff's counsel to satisfy him by evidence on oath, that these witnesses were material to the cause; and that he ought not to have struck the case off the file, until he had explicitly called upon the party to proceed in the manner above indicated.—*Con.* 1126, 26th Jan. 1838.

415. Held by the Sudder dewanny adawlut that before an order of dismissal on default is pronounced by the lower court in consequence of the non-attendance of witnesses, it is the duty of the zillah Judge to satisfy himself by evidence, on oath, that the absent witnesses are material to the cause.—*Rep. Sum. Cases*, 11th Aug. 1840, p. 47.

416. The showing of a subpoena to a witness while passing by on an elephant, held to be a personal and actual service.—*Rep. Sum. Cases*, 3d Nov. 1846, p. 87.

417. The rules contained in Section 6, Regulation 4, 1793, for the award of fines, cannot be considered applicable to the case of a person whose attendance may be required as a witness, but on whom a summons may not have been served. —*S. D. A. Sel. Rep.* 7th Dec 1837, vol. 1, p. 287.

418. When the summons has not been personally served on a witness, he cannot be proceeded against either by fine, or the issue of a warrant for his seizure.—*Con.* 172, 27th July 1844.

419. In reply to the question involved in your reference, namely, as to the propriety or otherwise of imposing a fine on a witness, on whom a subpoena may not have been served, I am desired to state, that the Court see no reason to depart from the construction laid down in their letter to the Commissioner at Moorshedabad, dated the 27th of July, 1844, that the rules contained in Section 6, Regulation 4, 1793, cannot be considered applicable to the case of a person whose attendance may be required as a witness, but on whom a summons may not have been served.—*Con.* 465, 7th Dec. 1827.

420. A plea of disgrace attaching to a personal attendance in court, urged by a party summoned to give evidence, held by the Sudder dewanny adawlut to be inadmissible.—*Rep. Sum. Cases*, 2d May 1842, p. 30.

421. Can a witness, who has evaded the summons of a Civil court, be proceeded against by *dustuk* and fine, supposing that no doubt exists, as to the summons having been earned by the serving peada to the actual residence of the witness, and all proper means used to serve it upon him?—*Reply*.—A witness, upon whom a summons may not have been personally and actually served, cannot be proceeded against, either by *dustuk* or fine.—*Con.* 487, 12th Sept. 1828.

422. Are any and what further measures allowable to enforce the attendance of a witness, who, having been duly served with a summons, has neglected to attend, and evades the second process of *dustuk* issued against him?—*Reply*.—Section 6, Regulation 4, 1793, contains the proper rule of proceeding in such case, namely, the imposition of a fine not exceeding 500 rupees.—*Ibid.*

423. It appearing from the papers transmitted by you, that Gungaram has been duly served with a summons, and has failed to attend, as promised in his written acknowledgment of the receipt of the summons, the Court remark that for such failure he is liable, under the provisions of Section 6, Regulation 4, 1793, to personal arrest, and fine not exceeding five hun-

not attend, till he has proof on oath that they are material

A Judge cannot dismiss a case for non-attendance of witnesses till he has proof on oath that they are material

Shewing a subpoena to a witness while passing on an elephant, a complete service of it

A person on whom no summons has been served cannot be fined under reg. 1793, sec. 6.

A witness on whom summons has not been personally served cannot be fined or seized

The same rule reported

A plea of disgrace attaching to personal attendance at court held by the S. D. A. to be inadmissible

A witness on whom a summons has not been personally served, cannot be proceeded against by *dustuk*, or fine

Where a witness has been duly served with a summons and neglects to attend, & evades the second process of *dustuk*, he may be fined with- in 500 rs

Where a witness has been personally summoned & evades the warrant for his seizure, there must be a proclamation

requiring his attendance; if he neglects it, he will be liable to a fine, to be levied by attaching his property.

dred rupees. As the witness has evaded the warrant issued for the seizure of his person, the Court are of opinion, that it will be proper to issue a proclamation requiring his attendance within a certain period; and that if he should still neglect to attend within the time limited in the proclamation, you should impose such fine upon him as you may judge proper, not exceeding the amount above stated, and proceed to levy the same by attachment and sale of his property.—*Con. 172, 27th July 1814*

*Though the Regulations do not require the proclamation, yet it seems to have been pointed out by the Sadler court as the proper mode of procedure in order to give the witness every advantage before proceeding to levy the fine.*

A mahajan is held to a fine of 500 rs. for not producing his books, when the court deems it necessary to order their production.

124 I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of a letter from you, dated the 11th instant, requesting their instructions, regarding the power of the Civil courts "to enforce the production of a mahajan's books which are necessary in cases before them." The Court are of opinion, that in all cases wherein it may be necessary to call upon a witness to produce documents of the nature referred to, which are known, or presumed on strong and sufficient grounds, to be in his possession, if the witness refuse or neglect to produce the documents required from him, and fail to assign satisfactory cause for not producing the same, he is liable to be proceeded against in conformity with the spirit of the rules for compelling witnesses to give their testimony, contained in Section 7, Regulation 3, and Section 25, Regulation 8, 1803, viz by imposing a fine not exceeding 500 rupees, and detaining him in custody until he shall consent to produce the documents required. —*Con. 270 26th March 1817*

Expence to be paid by the party summoning the witness.

125 If a witness who may attend pursuant to a summons, shall have incurred any expence in consequence of his being required to appear, the court is to award to him such sum for his charges as may appear to it reasonable whether he be examined or not. If the sum so awarded shall not be paid immediately, or secured to the witness to the satisfaction of the court, the party at whose requisition the witness may be summoned is not only to lose the benefit of his testimony, but the court, after the decree in the cause shall be passed, is to confine such party until he shall discharge the sum awarded to the witness.—*Reg. 1, 1793, Sect 6—Benares Reg. 8, 1795, Sect 2.—Ced. and Cong. Prov. Reg. 3, 1803, Sect 7*

Consequences attending his not paying such expence as required & the court how to enforce the payment.

What oaths are to be administered to parties or witnesses.

A foreign potentate cannot be summoned as a witness.

126 A foreign potentate cannot be called upon to give evidence in the Company's courts.—*Rep. Sum Cases, 26th Feb. 1811, p. 57*

Notices to witnesses how to be issued, when such witnesses are employed in the salt manufacture.

127. Notices to officers or other persons employed in the salt manufacture to appear as witnesses, shall be served during the manufacturing season in the same manner as if they were parties in the cause, but the Judges are to be careful not to issue notices to such officers, or persons, excepting when their attendance shall be necessary; and on their appearance to have them examined and dismissed with all practicable despatch, so that they may be absent from the business of the manufacture as short a time as possible.—*Reg. 10, 1819, Sect. 21, Cl. 8.*

The observance of the rules in question may be dispensed with in special cases by the cts. of justice.

428. The Judges and Magistrates are empowered in particular cases in which it may appear to them indispensably necessary for the purposes of justice, to order the personal attendance of any Native officer or person in any wise concerned or employed in

the salt manufacture, whether he may be a party or a witness in the suit or prosecution, at any time, during the manufacturing season, notwithstanding any thing that may be said to the contrary in those clauses, and to cause process to be executed upon him for that purpose, in the same manner as upon other individuals; but in such cases, the Judges and Magistrates are to record on their proceedings, their reasons for deviating from the provisions contained in the said clauses, which are to be considered as the general rule for issuing and executing such notices, summonses and warrants; and in the notice, summons or warrant, they are to specify that it has been specially ordered to be so executed in virtue of the discretionary power vested in them by this clause, and they are moreover strictly enjoined to refrain from every unnecessary exercise of that power.

But reasons for the deviation to be assigned

—*Ibid*, Cl. 9

429. The discretionary power granted by the ninth clause of Section 21 of this Regulation, to Judges and Magistrates in special cases of persons concerned in the provision of salt under a Salt Agent, is hereby declared to be equally vested in those authorities, in regard to persons employed in the chokey department.—*Ibid*, Sect. 28.

Discretion vested in the courts to deviate from the foregoing rules.

## SECTION XX.

### Oaths.

430. Whereas obstruction to justice, and other inconveniences have arisen in consequence of persons of the Hindoo or Mahomedan persuasion being compelled to swear by the water of the Ganges, or upon the Koran, or according to other forms which are repugnant to their consciences or feelings. It is hereby enacted, that except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes aforesaid within the territories of the East India Company shall make affirmation to the following effect.—“ I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth.”—*Act V* 1840, Sect. 1.

Every individual as above will make an affirmation, instead of an oath or declaration.

Form of affirmation

431. And it is hereby enacted, that if any person making such affirmation as aforesaid shall wilfully and falsely state any matter or thing which if the same had been sworn before the passing of this Act would have amounted to perjury, every such offender shall be subject in all courts to the same punishment to which persons convicted of perjury were subject before the passing of this Act.—*Ibid*, Sect. 2.

A false affirmation to be punished as perjury

432. And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second section of this Act shall be subject in all courts to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.—*Ibid*, Sect. 3.

The crime of causing or procuring a false affirmation to be punished as subornation of perjury

433. With reference to the provisions of Act V. of 1840, I am desired to transmit to you the subjoined translations, in Bengalee and Oordoo, of the affirmation enjoined to be taken by all Hindoo and Mahomedan deponents, and to request that you will make use of them, until

Translation of the form of affirmation.

further instructions in regard to the carrying out of the provisions of the Act shall be forwarded to you.—*Civ. Ord. 3d April 1840, par. 1.*

Modification of the form in the case of Mahomedans

434. In the event of its being necessary to use the Bengalee form of Mahomedans, the term used to designate the Supreme Being by persons of that persuasion will of course be substituted for that which now appears in the translation.—*Ibid, par. 2.*

Manner in which the affirmation is to be made

435. It is not required that the deponent should sign his name to any written affirmation, but he should merely read it out in court, or the declaration should be read out to him and repeated by him before giving his deposition, and at the heading of his written deposition it should be stated that he was sworn according to the provisions of Act V. of 1840.—*Ibid, par. 3.*

The provision of sec 2 of the act to be clearly explained to

436. Until general publicity has been given to the Act, the provisions of Section 2 should be clearly explained to persons giving evidence in your court.—*Ibid, par. 4.*

## SECTION XXI

### *Depositions of Witnesses in Zillah Courts*

Depositions of witnesses to be reduced into writing in the language and character which they may desire

437. The deposition of every witness who may appear in court, is to be taken viva voce in open court, and (if he be a Native) in the Persian, Bengal, or Hindoostanee language, and is to be reduced into writing in the Bengal Persian or Nagree character, according as the witness may desire. The deposition is to be subscribed by the witness with his name or mark.—*Reg. 1, 1793, Sect. 6—Benares Reg. 8, 1795 Sect. 2.—Civ. and Comp. Proc. Reg. 3, 1803, Sect. 7.*

The deposition of an European witness must be recorded in English with a vernacular translation

438. The Calcutta Court, with the concurrence of the Western Court, subsequently held on the 27th January, 1837, that the deposition of an European witness must be recorded in English, and a Persian translation made by the principal assistant himself, and annexed thereto.—*Com. 1035, Cal. and West. C. 12th Aug. 1836.*

Power vested in the Zillah and city judges with regard to the mode of signing processes and examining witnesses

439. The Judges of the Zillah and City courts are further authorized to employ their Registers and assistants, or any of their principal Native officers in taking down the depositions of witnesses, whom they may not have time to examine viva voce themselves, provided, that such depositions be taken in open court in the presence of the parties, or their authorized pleaders, whose attestations shall be subscribed to all depositions, so taken in testimony of their having been present; and if any question or dispute shall arise in taking the deposition of a witness so examined, the Judge shall, as soon as may be practicable, enquire into the question, and shall pass such order as may appear to him to be proper.—*Reg. 24, 1814, Sect. 11, Cl. 1.*

The depositions of witnesses, as far as practicable, to be taken by the presiding judge

440. The Court direct me to add, that the administration of civil justice in the courts of the zillah and city Judges and Registers will be essentially promoted and much unnecessary examination of witnesses be prevented, if the depositions of witnesses be taken by the Judges and Registers themselves, as far as practicable, instead of employing the Native officers to perform this duty, as authorized in cases of necessity, and under specific provisions in Section 11 Regulation 24, 1814.—*Civ. Ord. 7th Aug. 1817, par. 5.*

441. The Court are aware, that the extensive functions of the zillah and city Judges and Magistrates, will not admit of their personally examining the whole of the numerous witnesses whose depositions are required to be taken in their respective courts ; and in such cases besides a careful observance of the provisions contained in the first clause of Section 11, Regulation 24, 1814, the assistant or Native officer, employed to examine the witnesses, should be clearly informed, by a roobukaree, held in pursuance of Section 10, Regulation 26, 1814, of the point or points, upon which the examination is to be taken : with instructions not to allow the parties or their vakeels to question the witnesses upon other points — But it is the evident intention of the Regulations, and is most desirable for the ends of justice, that witnesses in civil suits depending before the zillah and city Judges or Registers, should, as far as possible, be examined *vis à toe* by the Judge or Register, whose duty it is to conduct the trial, and decide upon the merits of the case. The grounds of necessity which may prevent the Judge or Register from personally examining the witnesses, and compel him to employ an assistant or Native officer to examine them, should therefore in every instance be recorded on the proceedings which contain the order of examination.—*Ibid.* par. 9.

Farther rule regarding the deposition of witnesses.

442. You are desired to make it known as a general rule, that when a deposition may be taken before a Native officer, he is to affix his signature in token of its having been taken before him, in order that it may be seen to whom responsibility attaches in case of irregularity.—*Cir. Ord.* 25th Oct 1827, par. 1

A native officer who takes a deposition must put his signature to it.

443. I am desired further to remark, that in the opinion of the Court, it would very materially promote the ends of justice, if previously to rejecting evidence to any particular point as unnecessary, the Judge trying the cause would consider whether or not it is probable that such evidence (although not so deemed for his own satisfaction) may be deemed requisite by the Judge before whom the cause may be brought on appeal —*Ibid.* par. 3.

Before rejecting evidence on any point the judge will consider whether it may not be deemed requisite if the case is appealed

444. In the event of any witness being a Hindoo or Mahomedan woman of a rank or quality, which, according to the customs and manners of the country, would render it improper to compel her to appear in a Court of justice, the Zillah and City courts of dewanny adawlut are authorized to commission three creditable women, who are to be sworn to execute the commission truly and faithfully, to administer either an oath, or the prescribed declaration to persons of the rank, cast or quality beforementioned, (according to the discretion of the Judge and the religion of the witnesses) and to examine them on written interrogatories to be delivered to them by both parties or their vakeels, if both parties shall desire to examine the witnesses — *Reg.* 4, 1793, Sect. 6.— *Benares Reg.* 8 1795, Sect. 2.— *Ced. and Cong. Prov. Reg.* 3, 1803, Sect. 7

Court may dispense with the personal appearance of Hindoo or Mahomedan women of a certain rank

How the evidence of such women is to be obtained

## SECTION XXII

### *Zillah and City Courts—Examination of absent Witnesses.*

445. It is hereby enacted, that all Regulations and parts of Regulations for taking the examination of absent witnesses in any Presidency, are hereby repealed.—*Act VII* 1841. Sect. 1

Repeals all reg- or taking evidence of absent witness

Any court, or judge, in any civil proceeding, may order the examination upon interrogatories or otherwise, before any officer, &c. of any witnesses within its jurisdiction, or may issue a commission to a subordinate court for that purpose out of its jurisdiction, and give directions, &c. Court to which commission is directed shall examine witnesses in open court, &c. How commissions, to be executed within local limits of her majesty's courts, shall be directed.

446. And it is hereby enacted, that it shall be lawful for any court within the territories under the Government of the East India Company, and the several Judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the proceeding shall be depending, or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise, or to order a commission to issue to any other court for the examination of witnesses at any place or places out of such jurisdiction upon interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions for taking such examinations as well within the jurisdiction of the court wherein the proceeding shall be depending as without, as may appear reasonable and just; provided always, that any court to whom any such commission shall be directed shall take the examination in open court in all cases where witnesses are able to attend in court and are not exempted from attendance by law, absolutely, or at the discretion of the court. Provided also, that such commissions as aforesaid for the examination of witnesses out of such jurisdiction may be directed otherwise than to some court under special circumstances which may appear to the court issuing the commission to render such special direction expedient. Provided also, that all commissions issued and orders made by any court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's Supreme Courts, shall be directed in manner hereinafter mentioned—*Ibid*, Sect. 2.

Witnesses within the jurisdiction may be ordered to attend at their own place of residence or elsewhere and to produce documents. Disobedience to order a contempt of court. Witnesses to be obliged to attend in open court, &c.

447. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein any such proceeding as aforesaid shall be depending by the authority of this Act, it shall be lawful for the court or any Judge thereof in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence or elsewhere, if necessary or convenient so to do, and to produce all necessary documents, and papers, and the wilful disobedience to any such order shall be deemed a contempt of court, and punishable as in other cases of refusing or neglecting to give testimony. Provided always, that every person whose attendance shall be required under this Act, shall be entitled to the like payment for expences and loss of time as upon attendance in court in cases where such expences are now allowed.—*Ibid*, Sect. 3.

Courts and persons authorized to take examinations in pursuance of this act may take them upon oath or affirmation, & any person wilfully & corruptly giving false evidence shall be deemed guilty of perjury, and person procuring it, or subornation of perjury.

448. And it is hereby enacted, that it shall be lawful for every court or person authorized to take the examination of witnesses by any order or commission issued in pursuance of this Act, and they are hereby authorized and required to take all such examinations upon oath or affirmation wherein affirmation is admissible or required upon a trial, and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined shall be guilty of subornation of perjury—*Ibid*, Sect. 4.

449. And it is hereby enacted, that before any order or commission for the examination of any witness under this Act shall be issued, the court or Judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness or other cause allowed by law. And before granting any such commission, the court granting the same shall make particular enquiry as to the present residence of the witness whose deposition is to be taken under such commission, and as to the court of the same degree as the court granting such commission, or of inferior degree to such court which may be nearest to the place of residence of the witness, and the commission shall ordinarily be directed to such court of equal or inferior degree as may most conveniently execute the same. Provided however, that if there be doubt as to which is the most convenient court of equal or inferior jurisdiction, such commission may be directed to the Judge having jurisdiction within the district within which the commission is to be executed. And the Judge shall at his discretion execute the commission in his own court, or direct it to any subordinate court within his district, which shall have the same effect for all the purposes of this Act as if the commission had in the first instance been directed to such subordinate court. And no deposition taken under this Act, except as hereinafter mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than fifty miles from the place where the court is held, or exempted by law, absolutely or at the discretion of the court, from personal appearance in court, or unless the court shall at its discretion dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same, and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the court at its discretion to authorize the reading of the deposition. And all depositions taken under this Act, being duly certified, may be read at the discretion of the court without proof of the signature to such certificate.—*Ibid.* Sect. 5.

No order or commission to be issued for examination of a witness, unless court or Judge has reason to believe the witness will be unable to attend by reason of absence from the jurisdiction, &c. The court, &c. to make particular enquiry as to present residence of witness, &c. and commission to be directed to the court nearest such place of residence. Judge may execute commission in his own court or direct it to any inferior court in his jurisdiction. Depositions under this act, except as hereinafter mentioned, not to be read unless the deponent is proved to be beyond the jurisdiction or dead, or unable from sickness, &c. to attend personally, &c. Court may dispense with proof of such circumstances, or authorize the deposition to be read notwithstanding alteration of circumstances. Depositions to be read without proof of signature to certificate.

450. And it is hereby enacted, that any court other than one of Her Majesty's courts, or any Judge thereof, may issue such commissions as aforesaid, and such orders as are indicated in the second and third sections of this Act to be executed within the local limits of the jurisdiction of any of Her Majesty's courts, and all such commissions and orders except when directed otherwise than to a court, shall be directed to a Court of Requests having jurisdiction within such limits or any part thereof.—*Ibid.* Sect. 6.

Commissions to be executed within the local limits of superior courts to be directed to a Court of Requests within those limits.

451. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act within the territories of princes and states in alliance with the East India Company, and all persons within such last mentioned territories being in the service of the East India Company are hereby required to pay obedience thereto, and for disobedience thereof shall on being found within the jurisdiction of the court, or Judge issuing any such commission or order, be punishable

Commissions may be issued for execution within the territories of princes and states in alliance with the E. I. Company. Persons in service of E. I. Company required to obey such commissions, &c.



in like manner, as if such offence had been committed within such jurisdiction; and for giving false testimony under the same shall be punishable by any Court of justice within the territories of the East India Company.—*Ibid*, Sect. 7.

Courts to which commission is directed may punish disobedience to commission as a contempt.

452. And it is hereby enacted, that whenever the evidence of any absent witness shall be required out of the jurisdiction of the court in which the proceedings for which the evidence is wanted may be pending, and the commission shall be directed to any court, such court may punish the wilful disobedience of any such order as aforesaid as a contempt notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.—*Ibid*, Sect. 8.

Forms of commission to be used for the examination of absent witnesses.

453. The Court are pleased to prescribe the subjoined forms of commissions for use by all the Civil courts when the examination of absent witnesses is to be taken, under the provisions of Act VII. 1811—*Co. Ord.* 11th Feb. 1812, par. 1.

1. Form of commission to the ministerial officers of the court or to persons residing within its jurisdiction.

454. Form No. 1 is intended to be addressed to ministerial officers of the court, or other persons who may be residing within the jurisdiction of the court.—*Ibid*, par. 2.

2. Form of a commission to a court of inferior grade.

455. Form No. 2 is to be addressed to a court of the district, which may be inferior in grade to the court issuing the commission.—*Ibid*, par. 3.

3. Form of a commission to a court of another district equal or inferior in grade to that issuing it, or to the Judge or it.

456. Form No. 3 is intended to be addressed to a court of another district, equal or inferior in grade to the court issuing the commission, or (in cases of doubt as to which is the most convenient) to the Judge of such other district, or (under special circumstances) to any individual residing in such other district. In the event of the commission being addressed to the Judge, and that officer, under the discretion vested in him by law, deeming it expedient to direct the commission to a court subordinate to him it will be sufficient for this purpose that he endorse on the original commission the following recited—To A. B. Principal Sudder Ameen, Sudder Ameen or Moonsiff, &c. (as the case may be) You are hereby authorised and directed to conform to the requisitions of this warrant of commissions, making your return direct to the court issuing it. Witness my hand and seal of office, this — day of —, &c.—*Ibid*, par. 4.

4. Form of a commission when the witness resides in Calcutta.

457. Form No. 4 is to be used when the evidence of witnesses, residing in Calcutta, may require to be taken.—*Ibid*, par. 5.

The Act permits evidence to be taken otherwise than on interrogatories, but they are to be preferred.

458. The Act permits examinations to be taken otherwise as well as upon interrogatories, but the court are of opinion that in all practicable cases, interrogatories should accompany the commission.—*Ibid*, par. 6.

The subordinate courts will attend to this circular.

459. The attention of the subordinate courts is to be called to this Circular.—*Ibid*, par.

#### FORMS

460. No. 1.

In the Court of Dewanny Adawlut for the Zillah of —.

Ramnarain Sing, Plaintiff, versus Ranjcewun Dass, Defendant.

To A. B.

Whereas, by an order dated the — in the above cause, it has been directed that the evi-

dence of C. D. and E. F. residing at —, be taken by commission under the provisions of Act VII of 1841 ; and, whereas, in pursuance of such order, you are appointed to take the evidence of the said witnesses :—You are hereby empowered and required to take the examinations and depositions of the said witnesses upon oath or affirmation, as provided in Section 4 of the said Act, upon the interrogatories hereunto annexed, (or, “ on the points indicated in the annexed extracts from the court’s proceedings,” as the case may be,) which duty you shall perform truly, faithfully, and without partiality, to any or either of the parties in this cause; examining the witnesses in the presence of the parties or their agents (if in attendance), who shall be at liberty to question them on the points specified, and returning this warrant of commission, together with *the interrogatories hereunto annexed, and* examinations of the said witnesses *thereon\** to this court, on or before the — day of — next.

Given under my hand and the seal of this court, this — day of —, 184—

L. S.

A. B.

—*Ibid.*

#### 161. No. 2.

*In the Court of Dewanny Adaulat for the Zillah of —.*

Ramnarain Sing, Plaintiff, *versus* Ramjeeun Dass, Defendant.

To A. B., *Magistrate*

Whereas, by an order dated the — in the above cause, it has been directed that the evidence of C. D. and E. F. residing at —, be taken by your court, under the provisions of Act VII. of 1841.—You are hereby required to take the examinations and depositions of the said witnesses upon oath or affirmation, as provided in Section 4 of the said Act, upon the interrogatories hereunto annexed, (or “ on the points indicated in the annexed extract from the court’s proceedings,” as the case may be.) Which duty you shall perform truly, faithfully, and without partiality, to any or either of the parties in this cause, examining the witnesses in the presence of the parties or their agents (if in attendance), who shall be at liberty to question them on the points specified, returning this warrant of commission, together with *the interrogatories hereunto annexed, and* the examinations of the said witnesses *thereon\** to this court, on or before the — day of — next.

Given under my hand and the seal of this court, this — day of —, 184—.

L. S.

A. B.

—*Ibid.*

#### 162. No. 3.

*In the Court of Dewanny Adaulat for the Zillah of —.*

Ramnarain Sing, Plaintiff, *versus* Ramjeeun Dass, Defendant.

To A. B., *Judge of —.*

Whereas, by an order dated the — in the above cause, it has been directed that the evidence of C. D. and E. F. residing at —, be taken by your court under the provisions of Act VII. of 1841.—You are hereby requested to take the examinations and depositions of the said witnesses upon oath or affirmation, as provided in Section 4 of the said Act, upon the interrogatories hereunto annexed, (or, “ on the points indicated in the annexed extract from

\* The words in italics to be omitted, if interrogatories are not sent.

the court's proceedings," as the case may be;) the examinations to be held in the presence of the parties or their agents (if in attendance), who shall be at liberty to question the witnesses on the points specified, and to return this warrant of commission, together with *the interrogatories herewith annexed, and the examinations of the said witnesses thereon\** to this court, on or before the ——— day of ——— next

Given under my hand and the seal of this court, this ——— day of ———, 181—.

L. S.

A. B.

—*Ibid.*

163. No. 4.

*To A. B., Commissioner of the Court of Requests, Calcutta.*

Whereas by an order dated the ——— in the above cause, it has been directed that the evidence of C. D. and E. F. residing at ——— be taken by your court under the provisions of Act VII. of 1841.—You (or any or either of you) are hereby requested to take the examinations and depositions of the said witnesses upon oath or affirmation, as provided in Section 4 of the above Act, upon the interrogatories herewith annexed, (or, "on the points indicated in the annexed extract from the court's proceedings," as the case may be.) The examinations to be held in the presence of the parties or their agents (if in attendance), who shall be at liberty to question the witnesses on the points specified, and to return this warrant of commission, together with *the interrogatories herewith annexed, and the examinations of the said witnesses thereon\** to this court, on or before the ——— day of ——— next

Given under my hand and the seal of this court, this ——— day of ———, 181—.

L. S.

A. B.

—*Ibid.*

Rules for regulating the examination of witnesses in Calcutta

164. The Court are pleased, at the request of the Commissioners of the Court of Requests, to prescribe the following rules to regulate the examination of witnesses residing in Calcutta (Clerical order, No. 410, 11th February, 1842, para. 5).—*Ord. 8th July 1842*

The party for whom the commission issues will appear personally, or by counsel, to point out the witnesses, and pay the fees

165. The party on whose behalf a commission is issued to the Court of Requests, for taking the depositions of witnesses, is to appear so that court personally or by a duly constituted broker, to point out the witnesses, and to pay the usual fees of that court for subpoenas.—*Ibid.*, para. 1

In failure of which the documents will be returned

166. In failure of this within a reasonable period, the Court of Requests will at their discretion return the whole of the documents received from any zillah.—*Ibid.*, para. 2

The interrogatories must be written in a plain intelligible style,

167. The interrogatories and other papers are to be written in a plain intelligible style and to be subscribed in a fair and legible hand.—*Ibid.*, para. 3.

S. D. A. may direct a lower court to issue a commission to take the evidence of absent witnesses

168. The Subdar dewanny adawlut on cause being shewn will direct a lower court to issue a commission to take the evidence of absent witnesses, as prescribed by Act VII. 1841.—*Rep. Sum. Cases*, 7th Nov. 1842, p. 40.

How the evidence of a native of rank is to be taken

169. The evidence of a Native subject of rank should be taken by a commission under Act VII. 1841.—*Rep. Sum. Cases*, 26th Feb. 1844, p. 57

\* The words in italics to be omitted, if interrogatories are not sent

## SECTION XXIII.

*Zillah and City Courts—Perjury.*

470. The crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in the foregoing section, is hereby declared to be giving intentionally and deliberately, before a Court of judicature, Magistrate, or other authorized public officer, a false deposition, upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, civil or criminal, and upon a point material to the issue thereof — *Reg. 2, 1807, Sect. 1, Cl. 1.*

Definition of the crime of wilful perjury, punishable under the preceding section.

471. The Court having had occasion to take into consideration the state of the law of perjury as ruled by precedent at page 282 of the 1st volume of the Nizamut adawlut Reports, are of opinion that the mere fact of a witness having wilfully given two statements directly at variance with each other, on a point material to the issue of the case in which he gives his testimony, must be held to be perjury, and that the deponent, on conviction, is punishable accordingly. This opinion is in conformity with the exposition of the Mahomedan law given in the paragraph at the bottom of page 21 of the 2d volume of *Constructions—Cn. Ord. N. J. 18th June 1811.*

The mere fact of a deponent having given two contradictory statements on a material point constitutes the crime of perjury.

472. A false deposition, upon oath, or under a solemn declaration taken instead of an oath containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions of perjury, contained in Regulation 2, 1807, notwithstanding the provision for malicious, vexatious, and unfounded charges in Section 5, Regulation 7, 1811. — *Cn. 233, 29th Jan. 1816*

Further specification of the crime of perjury.

473. On the subject of the Commissioner's remarks on the crime of perjury I am directed to submit the following observations. The Court consider the Commissioner's representation of the prevalence of wilful perjury a good deal exaggerated, and they cannot concur with him in thinking that the alleged frequency of the crime is in any degree owing to the defective state of the law. They are of opinion that the law is in no wise in fault, and they are persuaded that if witnesses were examined in the courts of the Magistrates, as they should be by the Magistrates themselves, and closely questioned as to every apparent inconsistency, in their deposition, care being taken at the same time to make them understand the questions asked and to write down the answers given by them so as to convey exactly their intended meaning, the crime would not be so often committed with impunity as the Commissioner says it is. The Mahomedan law as stated by the Commissioner is not the law by which the Criminal courts are guided in trials for perjury, and he should have informed himself better on the subject, ere he imputed the frequency of acquittals to the deficiency of the law. To warrant a sentence of punishment, the Bengal code only requires that the proof adduced, (it being provided by clause 1, Section 3, Regulation 2, 1807, that the crime of perjury may be proved either by the free and voluntary confession of the accused or by the testimony of credible witnesses or by strong circumstantial evidence,) shall be sufficient to satisfy the Judge that the crime defined to be perjury has really been wilfully committed by the accused prisoner. The observations of the Commissioner that the Judge before whom the evidence of

Opinion of the S. D. A. on the subject of perjury and the evidence necessary to prove it.

witnesses to a charge of perjury is taken is more capable of forming a just estimate of the value of their testimony than a Judge who only reads the written depositions; and that the delay which the reference of trials for perjury to this Court occasions takes away from the effect of the punishment; apply equally, if at all, to all trials as well as to trials for perjury. The Court cannot think the reasons given by the Commissioner for not having committed the witnesses noticed in the 58th paragraph of his report to stand their trial for perjury sufficient. If he thought there was proof sufficient to warrant a strong presumption of their having wilfully committed the crime, it was incumbent on him to commit them for trial; and the Court cannot but consider his failure to do so, with reference to the reason stated, a perverse dereliction of duty.—*Con. 638, 27th May 1831.*

A conviction of perjury may be passed without a confession on the part of the accused.

471. I am directed by the Court of Nizamut adawlut to acknowledge the receipt of your letter of the 30th ultimo, requesting the Court to ascertain from their Law officers whether the exposition of the Mahomedan law of perjury as given by the Commissioner of Circuit for the 9th division, in his letter of the 9th February last, viz. that it is impossible to convict a person of perjury unless he confess, is correct or not. 2. I am also directed to request that you will lay before the Honorable the Vice President in Council, the accompanying copies of two letters from the Commissioner under dates the 22d September, 1830, and 23d June last, on the same question of perjury, together with a copy of a minute recorded by Mr. Ross on the 16th ultimo, on the subject of those letters. 3. The Court have not deemed it necessary to require any further opinion from their Law officers, as the question was maturely considered several years ago, and a joint futwa was then given by the three Law officers of the court, containing a full exposition of the law on the subject. A copy of that futwa, with an English translation, is submitted herewith, and it will be found to uphold the opinion already expressed by the Court, that a conviction of perjury may be had without the confession of the accused, and consequently that the view taken by the Commissioner is erroneous. In further confirmation, and as showing that practice has conformed to the law, as declared in the futwa abovementioned, the Court also submit copies of some futwas given at subsequent periods, as well by the Law officers of the Courts of circuit, as of this Court. 4. Under these circumstances, and as the provisions of Regulation 2, 1807, recognized the same principle, the Court see no necessity for any further declaratory law on the subject, especially as a reference can always be made to this Court, in cases of a difference of opinion between the Commissioners of Circuit and their Law officers. 5. In the 22d paragraph of his letter of the 23d June last, the Commissioner requests to be informed whether false depositions taken by Native officers are perjury or not? The majority of the Court hold that a false deposition on oath taken by a Native ministerial officer in the presence of the Magistrate, (in the manner prescribed in the Court's Circular order of the 12th December, 1809,) relative to some judicial proceedings, and upon a point material to the issue thereof, is perjury. Messrs. Ross and Ratray desire me to state that the Circular order above quoted allows the depositions of prosecutors and witnesses to be taken by the ministerial officers of the Foudary courts in the room in which the Magistrate is sitting while engaged with other business, which is in fact allowing the depositions to be taken by the ministerial officers instead of by the Magistrate, by whom, according to law, they should be taken, and that this mode of taking depositions not being authorized by the Regulations they (Messrs. Ross and Ratray) are of opinion that a legal conviction for perjury cannot be grounded on a deposition so taken.—*Con. 656, 2d Sept. 1831.*

475. The wilful concealment of bond debts due to an insolvent debtor, examined on oath under the rules contained in Section 11, Regulation 2. 1806, is punishable on conviction as wilful perjury under Clause 1, Section 13, Regulation 17, 1817.—*Con. 1086, Cal. C. 14th, West C. 28th April 1837.*

The wilful concealment of bond debts by an insolvent examined on oath is punishable as wilful perjury.

476. In addition to the rules contained in Sections 26, 30, and 33, Regulation 12. 1817, it is hereby declared that any person convicted before a Court of circuit, or the Court of Nizamut adawlut of having given intentionally and deliberately a false deposition upon oath, or under a solemn declaration, taken instead of an oath, before a public officer authorized to take the same, shall be deemed guilty of wilful perjury, and liable to the punishment of that offence, declared in Section 9 of this Regulation, although the deposition so taken may not relate to any judicial proceeding, provided it shall clearly appear to have been given falsely and criminally on a point material to the case, in which the deposition may have been taken — *Reg. 17, 1817, Sect. 13, Cl. 1.*

Sentence to be passed on persons convicted before C. of C. or N. A. of having wilfully given a false deposition on oath, or solemn declaration before any public officer authorized to take the same.

477. As Section 22, Regulation 12, 1817, does not invest revenue officers with power to examine parties on oath in regard to pensions referred to in Regulation 21, 1803, it was held that a prosecution for perjury could not be maintained against a party charged with having in such a case falsely deposed on an oath administered by a Collector. Had the act of perjury been committed in the course of an investigation into the conduct of a Native officer authorized to pay pensions, Clause 5, Section 10, Regulation 8. 1809, would apply — *Con. 1106, West. C. 8th Sept., Cal. C. 6th Oct. 1837.*

A false deposition on an oath administered by a collector in a case of pensions, is not punishable as perjury.

478. Subornation of perjury, punishable under the preceding section, is declared to be the crime of procuring or causing another person to commit the offence of perjury as above described — *Reg. 2, 1807, Sect. 1, Cl. 2.*

Subornation of perjury defined.

479. Any person convicted before a Court of circuit, or the Court of Nizamut adawlut of having procured or caused another to commit the offence described in the above clause, shall be deemed guilty of subornation of perjury and shall be liable to the punishment of that offence, declared in Section 9 of this Regulation — *Reg. 17, 1817, Sect. 13, Cl. 2.*

Persons convicted of causing or procuring another to commit the above offence, deemed guilty of subornation of perjury, and punishable accordingly.

480. If a witness, or any person, shall be guilty of wilful and corrupt perjury in any cause or matter depending in court, the Judge is immediately to commit the offender to close custody, to take his trial before the Court of circuit of the division in which the offence may be committed.— *Reg. 4 1793, Sect. 11.—Benares Reg. 8. 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 3 1803, Sect. 8.*

Witnesses, or persons guilty of wilful or corrupt perjury to be committed to take their trial before the court of circuit.

481. The Magistrates of the several Zillah and City courts shall not receive any charges of perjury, which may be preferred by parties in civil suits, either against their own witnesses, or against the witnesses of the adverse party, or of subornation of perjury against the adverse parties in such suits; and all individuals whose attendance is required in the Civil courts either as plaintiffs, defendants, or witnesses, are hereby declared not to be liable to any prosecutions of this description, unless they shall be committed to take their trial by the zillah or city Judge, under the authority vested in him by Section 11, Regulation 4, 1793.—*Reg. 3, 1801, Sect. 2.*

Magistrates not to receive charges of perjury.

Individuals attending in civil cases not liable to prosecutions for perjury, unless committed for trial by the judge.

Persons ordered to be tried for perjury, subornation of perjury, or forgery, not to be admitted to bail, without special cause.

482. Persons charged with the crime of perjury, subornation of perjury, or forgery, as defined in the preceding section, and appearing to the Civil or Criminal courts by whom they may be ordered to be brought to trial before the Courts of circuit, to have been guilty of the charge, shall not be admitted to bail, (notwithstanding anything declared to the contrary in any existing Regulation) unless specially authorized by the court under whose directions they are committed for trial.—*Reg. 2, 1807, Sect. 5.*

The rule in the above cited regulation is given to the judge to commit to prison or admit to bail, declared to extend generally, to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suit or any civil proceeding whatever before any of the authorities herein mentioned.

Mode of procedure when the proceedings on which the charge of perjury or subornation of perjury is grounded, may be held before a register, native commissioner or other officer.

483. The rule abovementioned, [which corresponds with *Reg. 3, 1801, Sect. 2.*] (with this qualification that the zillah or city Judge may commit to prison, or admit to bail, as he shall think proper, under the discretion given by Sect. 5, *Reg. 2, 1807.*) shall be considered applicable to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suit, or any civil proceedings whatever, before the Judge or Register of a Zillah or City court; or before a Sudder Ameen or Moonsiff, or an arbitrator or arbitrators appointed to investigate such suits, or an officer employed by a Zillah or City civil court, in any local or other enquiry; or in the execution of any civil process. In all such cases the proceedings, on which the charge of perjury, or subornation of perjury may be grounded, if not held before the zillah or city Judge in the first instance, shall be referred to him by the Register, Commissioner, or other officer before whom the proceedings may have been held, with the sentiments of the Register, Commissioner, or other officer upon the case; and if the Judge be of opinion that there are sufficient grounds for bringing the accused party to trial before the Court of circuit on a charge of perjury, or subornation of perjury, he shall record his opinion to that effect, and at the same time direct whether the accused shall be admitted to bail, or kept in custody. An authenticated copy of the order passed by him, with the whole of the original papers relative to the case, shall then be transferred to the cutcherry of the Magistrate, that the order of the Judge may be carried into effect, and the case brought before the Court of circuit, in the same manner as if the charge had been instituted and proceeded upon, in the court of the Magistrate.—*Reg. 17, 1817, Sect. 14, cl. 2.*

A judge is not permitted to commit to trial on a charge of giving money to witnesses in a civil suit to influence their evidence.

484. The Court of Nizamat adawlut have had before them your letter, dated the 23d instant, in the case of Government *versus* Sheikh Bukhtaur, charged with giving money to witnesses in a civil suit for the purpose of influencing their evidence. In reply, I am desirous to acquaint you, that, adverting to the circumstances stated in your letter, the Court entirely concur with you in opinion, that the zillah Judge was not authorized, under the provisions of Clause 2, Section 14, Regulation 17, 1817, to commit the above named individual for trial. The Court have therefore been pleased to annul the commitment in the case in question, and they direct that you adopt the necessary measures for the immediate release of the prisoner.—*Con. 504. 25th April 1829*

The judge will commit, and admit bail or not. The magistrate will cause the attendance of parties and witnesses. A session judge cannot try a case committed by him as civil judge.

485. In cases of perjury in the Civil courts, (whether before the Judge or a subordinate court,) the commitment should, according to Clause 2, Section 14, Regulation 17, 1817, be made by the Judge; who will at the same time, determine whether the persons charged are to be admitted to bail or kept in custody; the duty of the Magistrate being confined to causing the attendance of the parties and witnesses before the court by whom the case is to be tried. When the civil Judge has made a commitment, he cannot try it in his capacity of Session Judge; it

must be tried by the Commissioner of the division.—*Cir. Ord. Cal. and West. C. 29th May 1835, par. 2.*

486. The Court, considering the registry of deeds to be a "civil proceeding," contemplated by Clause 2, Section 14, Regulation 17, 1817, are of opinion, that in cases of *perjury* before the Register of Deeds, the Judge and Register should proceed in conformity with the provisions of that clause.—*Con. 611, 25th Nov. 1831.*

In a case of perjury before a register of deeds, the judge & register will act according to reg. 17, 1817, sec. 14, cl. 2.

487. When perjury is committed before a Register, he should transmit his proceedings to the Judge, who, if he be of opinion that there are sufficient grounds for bringing the accused to trial, will commit the case, and the Magistrate will include it in his calendar as if the commitment had been made by himself.—*Con. 285, 4th Feb. 1818.*

Mode of procedure when perjury is committed before a register.

488. There is no Regulation which exempts females convicted of perjury from *tusheer*.—*Con. 506, 8th May 1829.*

Females convicted of perjury may be subjected to *tusheer*.

489. A deposition taken on oath in the private dwelling of a Sudder Ameen is illegal, and a charge of perjury cannot be sustained on such a deposition.—*Con. 627, 25th Feb. 1831.*

A deposition on oath in the private dwelling of a S. A. is illegal, and no charge of perjury can be sustained on it.

490. The order of a Zillah Judge refusing to proceed against parties for forgery or perjury is final.—*Rep. Sam. Cases, 15th Sept. 1816, p. 85.*

A judge's order refusing to commit for perjury or forgery is final.

## SECTION XXIV

### *Zillah and City Courts—Rules regarding the Admission and the Filing of Exhibits*

[ *For the stamp duty on the petition for filing Exhibits, vide page 209* ]

491. In modification of Sections 15 and 16, Regulation 1, 1814, it is hereby declared, that in lieu of filing a separate *durkhast* or application for the admission of each exhibit, and the attendance of each witness, it shall be sufficient to file one or more applications or lists, including any number of exhibits desired to be filed and the names of any number of witnesses desired to be summoned: provided that such applications or lists be written on one, two, or more sheets or rolls of stamped paper, the total value of which shall correspond in amount with that of the stamped paper, which would have been requisite had the application for each exhibit, or witness, been written on separate stamped paper, under the rules contained in Sections 15 and 16, Regulation 1, 1814.—*Reg. 26 1814, Sect. 22.*

Modifications of sec. 15 & 16, reg. 1, 1814, with regard to the mode of filing exhibits and summoning witnesses.

492. Every exhibit or written evidence (excepting exhibits that may be proved by such absent witnesses as are hereafter mentioned,) is to be produced in open court at the trial, and if disputed, is to be duly proved by the examination of witnesses sworn as above directed, whose depositions are in the same manner to be reduced into writing and signed. Every exhibit is to be marked with some letter or number to identify it, and the letter or number is to be referred to in the deposition proving it. All exhibits proved by witnesses not present in court are in the same manner to be marked and referred to in the depositions proving them, and are to be endorsed and minuted as having

Exhibits and written evidence to be produced in open court at the trial.

Such exhibits and evidence if disputed to be duly proved by witnesses, whose depositions are to be reduced to writing.

Exhibits how to be marked and referred to in the depositions proving them.



Exhibits proved by witnesses not present in court, to be marked and referred to in the same manner, & the date on which they may be read in court is to be endorsed upon them.

The record-keeper will certify, in the presence of the vouchers of the parties, the actual state of all original documents at the time of their being filed, and of their being transmitted to the court of appeal.

been read at the time they may have been read in the court.—*Reg. 4, 1793, Sect. 6.—Benares Reg. 8, 1795, Sect. 2.—Ced. and Comq. Prov. Reg. 3, 1803, Sect. 7.*

493. Several instances having lately occurred of objections being taken in this court to original documents filed as exhibits in the lower courts, on the ground of their having been altered since the date of their execution, which, at the time they were filed, as well as on the decision of the suit by those courts, passed without question, and without any doubts being expressed as to their authenticity; and the Court seeing reason to believe that such documents have not unfrequently been altered by interested persons, in order to throw suspicion upon them, and to suit their own views, either after the decision of the case by the lower court, or subsequently to the receipt of the record in this Court, I am directed, to request that, which a view to check, as far as may be practicable, this very serious evil, you will cause the record-keeper of your court, or any other respectable and trustworthy officer on your establishment to certify in the presence of the vouchers of the parties, or of the parties themselves, the actual state, at the time of filing, of all original documents exhibited as proofs in your court, desiring him carefully to note any interpolations, erasures, or other alterations at that date apparent on the face of them, and that you will observe a similar precaution at the time of despatching the record of causes appealed to the court, forwarding the original documents filed by the respective parties in such case together with the original depositions of the witnesses for the prosecution and defence, in two parcels, in a separate cover under seal, each parcel being endorsed as in the margin, and accompanied by a list of the content and the certificates above required. By the introduction of the same rule into the courts subordinate to you, to whom you are requested to issue the necessary instructions, the Court would hope that the evils above complained of may be in a great degree remedied, if not entirely removed.—*Cur. Ord. Ced. and West. C 29th July 1836.*

The above rule referred to in the circular order.

494. The Court, having observed a very general and increasing disregard of the rule contained in the Circular order, No. 178, dated the 29th July, 1836, which requires that, in despatching the record of causes appealed to the Court, the original depositions of witnesses and the exhibits filed by the parties respectively, be forwarded in a separate cover under seal, each packet being properly endorsed and accompanied by a list of its contents and by a certificate of the actual state of the exhibits at the time of filing, deem it necessary to call the particular attention of the Judges to the circular instructions referred to, and to intimate that any deviation which may in future be observed from this important rule, which by the circular is also made applicable to the subordinate courts, will be visited with serious notice by the Court.—*Cur. Ord. 5th Oct. 1841.*

Judge how to proceed in the event of his rejecting exhibits or written evidence that may be offered.

495. If any exhibit or written evidence is offered to a Zillah or City court in a cause depending before it, and the Judge of the court shall think it just and proper to reject it, he is to endorse upon it the word "rejected," together with the names of the parties in the cause, and the name of the party who produced the document, the date on which it may be rejected, and his reasons for not admitting it, (which may be written either upon the document rejected, or on a paper to be annexed to it,) and to subscribe his name to the endorsement, and return the document with his reasons so

written to the person who produced it.—*Reg. 4, 1793, Sect. 6.—Benares Reg. 8, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 7.*

496 The Court only think it further necessary, in this case, to point out to the Magistrate the mistake into which he appears to have fallen, in supposing that instruments which the Civil court may deem forged are to be returned to the parties under Section 6, Regulation 4, 1793. The Court remark, that this section refers to documents which a court may refuse to file as not being relevant, or not produced in proper time, or for other good and sufficient cause; but cannot be understood as applying to documents filed, but proved or suspected upon trial to be forgeries; to return which to the parties producing them, would obviously often tend to defeat justice.—*Con. 139, 16th Dec. 1813.*

Instruments the court may deem forged are not to be returned to the parties under the above act.

497. I beg leave to forward to you, for the information and orders of the Court of Sudder dewanny adawlut, a copy of my proceedings under this day's date in the above case in which the original exhibits, and other papers and documents and deeds are missing, but of which copies, I am led to understand, are possessed by and procurable by the parties concerned. The Court desire me to say, that they are aware of no objection to calling upon the parties to supply copies of such of the missing papers as they may have by them, or be able to furnish.—*Con. 869, 11th Feb. 1831.*

Where exhibits are missing, of which copies are possessed and may be procurable, the parties may be required to furnish them.

498. A document stamped under the provisions of Clause 5, Section 14, Regulation 10, 1829, was admitted; it being presumed that the requisite forms had been observed in obtaining the stamp.—*S. D. A. Sel. Rep. 19th Feb. 1835, vol. 6, p. 21*

Any stamped document according to law is to be admitted

499. A claim for arrears of rent, on a special agreement executed on a stamp of inadequate value dismissed.—*S. D. A. Sel. Rep. 24th Aug. 1840, vol. 6, p. 303*

A claim for arrears of rent, on a document inadequately stamped, dismissed.

500. Documents written on paper not bearing the prescribed stamp shall not be admitted as evidence or filed in any Court of justice.—*Con. 292, 9th July 1818.*

Documents not bearing the prescribed stamp cannot be received.

501. Documents executed on plain paper under Section 79 of the Act for the relief of insolvent debtors (9th George 1, cap 73,) are admissible as evidence in the Company's courts, without being stamped.—*S. D. A. Sel. Rep. 15th Sept. 1842, vol. 7, p. 118.*

But those connected with the insolvent act of the 9th Geo 4th, admissible without being stamped.

502. A bond executed, in Calcutta, on plain paper, on the 27th February, 1824, was put in evidence by plaintiffs, and had been generally admitted by defendant in his answer. Held that it was not receivable in evidence unless stamped under Regulation 16 of 1824, and was returned to exhibiting party that he might get the proper stamp affixed.—*S. D. A. Sel. Rep. 5th March 1833, vol. 5, p. 271.*

A bond executed in Calcutta on plain paper, though admitted by the defendant, was returned to have the proper stamp.

## SECTION XXV.

*Zillah and City Courts—Decisions of the Sudder Court in reference to the Validity of Deeds and Documents.*

503. The Sudder dewanny adawlut maintain a title to lands obtained under a deed of composition for homicide.—*S. D. A. Sel. Rep. 10th April 1794, vol. 1, p. 4.*

A title to lands admitted on a deed of composition for homicide.

504. A deed admitted, in conformity with the opinion of the Law officers, on the testimony of the Cazeer whose seal is affixed to it [not his signature] and of the Moonshree who drew

A deed admitted on the seal of the cazeer & of the moon-

she who drew it, it; though there were no subscribing witnesses.—*S. D. A. Sel. Rep. 14th Aug. 1801, vol. 1, p. 52.*

The validity of a deed admitted, notwithstanding a surreptitious addition. 505. The validity of a deed upheld, to which a surreptitious addition, purporting that it was void, had been made by the subscribing party.—*S. D. A. Sel. Rep. 2d May 1806, vol. 1, p. 132.*

A deed set aside, to which the signature had been unduly obtained. 506. A deed set aside to which the subscriber's signature had been obtained by undue means.—*S. D. A. Sel. Rep. July 1806, vol. 1, p. 147.*

Judgment of the lower courts reversed on documents not discovered till after that judgment had passed. 507. Judgment of the lower courts, in favour of the claimant of certain lands, reversed by the Sudder dewanny adawlut, on documents, proving the title of the father of the party in possession, not discovered until after the decree of the Provincial court.—*S. D. A. Sel. Rep. 1st Sept. 1806, vol. 1, p. 159.*

A deed of trust not produced or used for 20 years, rejected as a fabrication. 508. An *umamut-nameli*, or deed of trust, not produced for a period of twenty years, and no claim made on the strength of it by the party in whose favour it was alleged to have been executed, rejected as a fabrication.—*S. D. A. Sel. Rep. 1st Aug. 1808, vol. 1, p. 245.*

A deed cannot be rejected on the plea of ignorance of the contracting party. 509. A deed cannot be set aside on the plea of ignorance by the contracting party.—*S. D. A. Sel. Rep. 27th July 1812, vol. 2, p. 30.*

In a suit for lands, under a deed of gift, only the title of the claimant to her is required into, if neither party has a right, the lawful heirs must regularly sue to recover it. 510. In a suit brought by a person against another for certain lands under a deed of gift alleged to have been executed in his favour by the proprietor, it is only necessary to enquire into the title of the claimant; and should it incidentally appear that neither party has a right to the property, still the rightful heirs must institute a regular suit to recover it.—*S. D. A. Sel. Rep. 5th April 1816, vol. 2, p. 178.*

The authenticity of a deed which was declared inadmissible by a decree appealed from, but withdrawn on appeal by *razenamah*, may be enquired into in a subsequent suit. 511. A deed having been declared inadmissible by a *zillah* decree, from which an appeal was preferred but subsequently withdrawn by *razenamah*, held that the production of that decree was not sufficient to preclude enquiry into the authenticity of the deed in a subsequent suit.—*S. D. A. Sel. Rep. 12th Jan. 1823, vol. 3, p. 200.*

Circumstances under which a particular deed of gift had been set aside. 512. A deed of gift, purporting to have been executed by the deceased proprietor, set aside, as it had not been produced in a former action brought by the widow against the present claimant, when, on his plea of adoption proving untenable, a deed had been filed in court, by which he admitted her right to the succession, which deed, although now disclaimed by him had been duly recorded, and carried into effect without opposition at the time.—*S. D. A. Sel. Rep. 22d Dec. 1823, vol. 3, p. 275.*

Reasons in which the claim of the legal heir was adjudged, in opposition to an alleged deed of gift. 513. Claim of the legal heir adjudged, in opposition to an alleged deed of gift, it being doubted whether the deed was executed at all or whether, at the time of its execution, the donor, from extreme old age, was in his sound mind.—*S. D. A. Sel. Rep. 23d June 1824, vol. 3, p. 300.*

An *ikrarnamch* executed by a female rejected on strong circumstantial evidence. 514. An *ikrarnamch*, or written acknowledgment, alleged to have been executed by a female, not admitted in evidence of a conveyance, it being in direct opposition to strong circumstantial evidence.—*S. D. A. Sel. Rep. 16th Sept. 1808, vol. 1, p. 257.*

515. An *ikrarnameh*, or written acknowledgment, by the defendant to the plaintiff, that the latter is proprietor of a portion of the estate belonging to the former, held to be good evidence of the transfer, though no consideration was proved; an attempt by the defendant to prove a counter *ikrarnameh* by the plaintiff having failed.—*S. D. A. Sel. Rep.* 21st July 1824, vol. 3, p. 392.

An *ikrarnameh* held to be good evidence of the transfer of land, though no consideration was proved.

516. Claim to set aside a deed of sale dismissed, but the right of a third party declared not to be affected by the decree confirming the sale.—*S. D. A. Sel. Rep.* 21st March 1825, vol. 4, p. 34.

Claim to reject a deed of sale dismissed, but the rights of a third party not affected thereby.

517. Deeds of release, founded on an invalid deed of assignment, are not binding.—*S. D. A. Sel. Rep.* 13th Feb. 1827, vol. 4, p. 210.

Deeds of release on an invalid deed of assignment, not valid.

518. A *razeenamah* and admission of plaintiff's claim, executed by her aunt, turning on a deed of her grandfather which had been declared invalid, were held to be legally inoperative.—*S. D. A. Sel. Rep.* 28th Jan. 1833, vol. 5, p. 264.

Circumstances in which a *razeenamah* was declared legally inoperative.

519. A certain instrument, the date of which appears stated according to the *Sumbut* era as far as regarded the *day of the month*, while the *year* mentioned is the *Fuslee* year, being declared invalid in consequence of the English date of the sale of the stamped paper being ostensibly a day posterior to the date of the engrossment of the said instrument; the Sudder dewanny adawlut see reason to presume that the person who engrossed the document intended to insert the *Sumbut*, instead of the *Fuslee* year, and having, on comparison found that such alteration renders the dates of the instrument correct, and the evidence of its execution appearing to be satisfactory, they finally declare it valid.—*S. D. A. Sel. Rep.* 14th July 1835, vol. 6, p. 32.

The use of the *Sumbut* year in lieu of the *Fuslee* year, which appeared to have been an inadvertence, did not render a deed invalid.

520. No claim can be founded on a document judicially declared to be false and invalid, even against the party producing it and asserting its genuineness and validity.—*S. D. A. Sel. Rep.* 26th Aug. 1835, vol. 6, p. 39.

No claim can be founded on a deed declared by a court invalid, even against the party producing it.

## SECTION XXVI.

### *Zillah and City Courts—Forgery and Fraud.*

521. The penalties for forgery, stated in Section 3, are meant to include all fraudulent and injurious fabrications, or alterations of written deeds, or of written or printed papers, of whatever description, as well as all counterfeit seals or signatures thereto; and the illicit imitation of any public stamp, or stamped paper established by Government. It is further hereby declared, that persons convicted of procuring, or causing, any such forgery, will be liable to the same punishment, as those convicted of having actually committed the forgery, at the instigation of others.—*Reg. 2, 1807, Sect. 4, Cl. 3.*

Forgery

522. The provisions of Regulation 2, 1807, not including the offence of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect or attempting to give effect, to fabricated deeds and papers, knowing the same to be false and fabricated; or the offence of using, issuing, selling or otherwise disposing of, or attempting to dispose of, counterfeit stamped paper, bearing the imitation of a public stamp, knowing the same to be coun-

Provision for the punishment of knowingly and fraudulently uttering forged instruments, counterfeit stamped paper, coin, bank notes, promissory notes or other securities for money.

terfeit, or the offence of paying, or tendering in payment, counterfeited coin, bank-notes, promissory notes, or other securities for money, knowing the same to be counterfeit, the following additional provisions are enacted for the punishment of these offences respectively—*Reg. 17, 1817, Sect. 10, Cl. 1.*

Sentence to be passed on persons convicted before a Court of circuit or Nizamut of any of the above offences

523. If any person shall be convicted before a Court of circuit, or the Court of Nizamut adawlut, of any of the offences specified in the above clause, he shall be sentenced to imprisonment for such period, not exceeding seven years, as the Judge of circuit may deem adequate to the nature and circumstances of the case and shall also, in all instances of an aggravated nature, or of a repetition of the offence, after being once convicted and discharged, be sentenced to public exposure by tusheer. In every instance of a repetition of the offence, after a previous conviction and discharge, the Judge of circuit may further at his discretion, sentence the offender to receive corporal punishment, not exceeding thirty stripes with a cerah or ratan. If a person twice convicted and discharged, be again found guilty of any of the offences specified in the preceding clause, and the Judge of circuit shall be of opinion that he ought to be imprisoned for a longer period than seven years, he shall refer the trial, with his sentiments, for the sentence of the Court of Nizamut adawlut in pursuance of the seventh clause of Section 2, Regulation 53, 1803.—*Ibid, Cl. 2.*

The falsification of measurement papers, affects the party to be charged for forgery

524. "Measurement papers" must be considered as coming within the denomination of "deeds and papers," the fraudulently publishing as true, or otherwise fraudulently giving or attempting to give effect to which, knowing the same to be false and fabricated, is declared by Section 10, Regulation 17 of 1817, to subject the offender on conviction to the penalties prescribed by that section for forgery.—*Con. 1061, Cal. C. 9th Dec., West C. 23d, Dec. 1836.*

A Magistrate cannot entertain a charge against a Magistrate unless he has been ordered to do so

525. By analogy to the case of perjury, the performing of accusations for which offence by parties in civil suits has been prohibited by Regulation 3, 1801, it is not competent to a Magistrate to entertain a charge founded on the alleged forgery of a document which had been exhibited in a Civil court, unless the Judge or Judges of such Civil court shall have directed a prosecution for forgery, or expressly declared that the party aggrieved by such document is at liberty to prosecute.—*Con. 154, 13th July 1827.*

Persons ordered to be tried for perjury, subornation of perjury, or forgery, not to be admitted to bail, without special cause

526. Persons charged with the crime of perjury, subornation of perjury, or forgery, as defined in the preceding section, and appearing to the Civil or Criminal courts by whom they may be ordered to be brought to trial before the Courts of circuit, to have been guilty of the charge, shall not be admitted to bail, (notwithstanding any thing declared to the contrary in any existing Regulation) unless specially authorized by the court under whose directions they are committed for trial.—*Reg. 2, 1807, Sect. 5.*

An offender may be brought to trial for forgery in a miscellaneous case

527. I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, requesting to be informed whether, in a miscellaneous case, you can proceed against a person whom there may appear sufficient grounds to bring to trial for forgery. In reply, I am directed to refer you to the words "to any civil proceedings whatever" in Clause 2, Section 14, Regulation 17, 1817, and to observe that they would include the miscellaneous case alluded to. I am directed to add that in the event of your making the commitment, it should be tried by the Commissioner, and not by you in your capacity of Session Judge.—*Con. 838, Cal. C. 11th Dec. West C. 15th Nov. 1833.*

528. I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of your letter of the 23d ultimo, requesting the Court's opinion, as to whether you are authorized to take cognizance of a case of forgery arising out of a civil suit tried by a Sudder Ameen. In reply, I am directed to inform you, that if the civil suit, in which the document said to be a forgery was filed, is pending before you in appeal, you are competent to commit the party, whom you may deem guilty of having forged it, (or filed it knowing it to have been forged,) to be tried by the Court of circuit; but that if the appeal has been decided, the alleged forgery can only be brought under your cognizance, by your obtaining the sanction of the Sudder dewanny adawlut to revise your judgment — *Con. 572, 27th Aug. 1830.*

How a charge for the forgery of a document arising out of a suit tried by a N. A. must be prosecuted.

529. I am further directed to inform you, that in the opinion of the Court, the Sudder Ameen, who tried the suit in the first instance, if he thought that the document in question was a forgery, and that the party who filed it knew it to be so, should have sent the case to the Judge, who would have been competent to proceed against the person or persons whom he might have deemed guilty, in like manner as it would be in a suit instituted and pending before himself. — *Ibid.*

Idem.

530. Held on a reference from the Session Judge of Benares, that it is not competent to a civil Judge to commit for trial any party to a civil suit, or other person, on a charge of fraud, but that he should make over the case to the Magistrate, with a view to that officer's investigating the charge, and disposing of it himself, or, if committable under the Regulations, committing it at his discretion for trial at the sessions — *Con. 1225, West. C. 14th June, Cal. C. 12th July 1839.*

A civil court cannot commit a party on a charge of fraud. The case must be made over to the magistrate.

531. The Court ruled that in the case of a defendant charged with presenting or filing a petition in the Civil court with the fraudulent intent of obtaining money already paid to him, the Judge is not competent to commit the accused for trial, but that after completing the investigation as far as may be in his power, he should transmit the papers to the Magistrate, stating his opinion on the case, and leaving the Magistrate to commit or not as may appear to him advisable. — *Con. 925, West. C. 9th Jan., Cal. C. 27th March 1835.*

A civil court cannot commit a party for fraudulently endeavoring to obtain money already paid to him. He must make it over to the magistrate.

532. The Civil courts cannot interfere to stay the proceedings in the Criminal court, in the prosecution of a case of forgery at the instance of the Collector. — *Rep. Sum. Cases, 19th Nov. 1846, p. 67.*

A civil court cannot stay the proceedings of a criminal court in a prosecution for forgery at the instance of the collector.

533. While a case under Regulation 15, 1824, was pending before the Magistrate, it was competent to him to make a commitment for forgery or uttering forged deeds, but not after he had referred the investigation of that point to the Civil court. As the Sudder Ameen, who decided the civil case, did not take any notice of the alleged forgery, and the case was pending in appeal before the Judge, the Magistrate was directed to instruct the parties to apply to the Judge for permission to prosecute for forgery in the Criminal court, the deed bearing palpable marks of forgery — *Con. 820, 23d Aug. 1833.*

Course of procedure in a case of uttering forged deeds before a magistrate under reg. 15, 1824.

534. A Magistrate cannot originate a prosecution for forgery of a document filed in the Civil court. — *Con. 704, 13th July 1832.*

A magistrate cannot originate a prosecution for forgery of a document filed in the civil court.

535. The Court anticipating that prosecutions for forgery brought to light in the course of civil judicial proceedings, may become more frequent, as the expediency of using every lawful means for the suppression of that offence becomes more obvious, think it useful to notify,

Course of procedure when a party charged with forgery, discovered in a civil suit, may abscond.

that the provisions of Section 4, Regulation 3 of 1804, have been held by both Courts of Nizamut adawlut, to be capable of enforcement by the civil Judges against any party who may abscond, being at the time under a charge of forgery, brought to light in the course of civil judicial proceedings. It will be the duty of the civil Judge, in such cases, to call upon the Magistrate of the district to perform the acts described in Section 4, Regulation 3 of 1804, and the corresponding section of Regulation 20 of 1817, with a view to the apprehension of the absconding party, and it will be incumbent on the Magistrate to obey such requisitions, and to proceed as he would do, were the absconding party in question charged with a criminal offence, primarily cognizable in his court. The principle, set forth in the third paragraph of Construction 638, is declared applicable to attachment of property directed to be made under the sanction of the law above cited, and these instructions.—*Cir. Ord. S. D. and N. A. 17th May 1847*

## SECTION XXVII

*Zillah and City Courts—Particular Investigations*

Courts not to refer matters of fact to any person whomsoever with a view to passing a decree

536. The Judges of the Zillah and City courts, are strictly enjoined not to allow a report of any matters of facts relating to any cause depending before them, with a view to the passing a decree, to be made to them by any officer of the court or any other person, excepting in cases in which special authority for that purpose may be given to the courts by any Regulation.—*Reg. 4, 1793, Sect. 16 -- Benares Reg. 8, 1795, Sect. 2 — Cal. and Comp. Prov. Reg. 3, 1803, Sect. 17.*

Exception to the rule.

Made in which the trustworthiness of Native account books is to be tested

537. The Civil courts have been in the habit of calling on the treasurer of their establishment for reports regarding the trustworthiness of account books in the Native language, as affecting the validity of claims which may be grounded thereon. But such a practice is opposed to Section 16, Regulation 1 of 1793, which prohibits Judges from obtaining a report of matters of fact relating to any cause depending before them, with a view to the passing of a decree, from any officer of the court or other person, except where special authority may have been conferred by any Regulation, or a reference may be made to the Law officers on any point concerning Hindoo or Mahomedan law. The Court are accordingly pleased to prohibit the practice alluded to, and to direct the observance of the following rule—*Cir. Ord. 4th Feb. 1840.*

Then

538. Whenever occasion may require the examination and scrutiny of Native account books in any civil case, the European Judges should, as far as possible, call in the aid of assessors for that purpose. In instances, however, where such a course may be deemed by them inexpedient, recourse should be had to the agency of ameen, to be appointed at the expense of the plaintiff or defendant, as the case may be, whose duty it would be to inspect the books either at the mulajam's house or in court, as might seem fitting with reference to the circumstances of the case and the wishes of the parties. And the latter course should also be followed by the Native courts, who are not authorized to employ assessors for the purpose stated—*Ibid.*

Matters of account and of fact and of usage may be referred to the S. A. for adjustment, investigation, and report

539. In the trial of regular suits by the zillah or city Judges, or in miscellaneous cases, whenever the adjustment of accounts regarding the execution of decrees, and mercantile or revenue transactions, or the investigation of disputes between landlord and tenant, or of other special matters of account, fact, or usage, may be requisite; and such ad-

justment or investigation, if conducted by the Judge himself, would occupy a larger portion of his time than could be conveniently devoted to it; the Judge is hereby authorized to direct any of the Sudder Ameens under his jurisdiction, to make such adjustment or investigation.—*Reg. 23, 1814, Sect. 76, Cl. 1.*

540. The Judge shall in these cases furnish to the Sudder Ameen such part of the proceedings and such detailed instructions, as may appear necessary for his information and guidance, and shall direct the parties, or their vakeels, or authorized agents to attend upon the Sudder Ameen, during the adjustment or investigation.—*Ibid, Cl. 2.*

Instructions to be furnished to the S.A. on such reference

541. The instructions must distinctly specify, whether the Sudder Ameen is merely to transmit the proceedings, which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation.—*Ibid, Cl. 3.*

What the instructions are to specify

542. The proceedings of the Sudder Ameen are to be received in evidence in the case, unless the Judge may have reason to be dissatisfied with them, in which case he will make such further enquiry, as may be requisite, and will pass such ultimate judgment or order, as may appear to him to be right and proper.—*Ibid, Cl. 4.*

The proceedings of the S.A. on such references, to be received as evidence

543. By the first clause of Section 76, Regulation 23, 1814, it is provided, that “in the trial of regular suits by the zillah or city Judges, or in miscellaneous cases, whenever the adjustment of accounts regarding the execution of decrees, and mercantile or revenue transactions, or the investigation of disputes between landlord and tenant, or of other special matters of account, fact, or usage, may be requisite; and such adjustment or investigation, if conducted by the Judge himself, would occupy a larger portion of his time than could be conveniently devoted to it, the Judge is hereby authorized to direct any of the Sudder Ameens under his jurisdiction to make such adjustment, or investigation.” The second, third, fourth fifth and sixth clauses of the section above-mentioned, contain further provisions relative to the cases therein stated: and the whole of these clauses shall be still in force, except the fifth, which, in consequence of the salary to be hereafter received by Sudder Ameens from Government, is hereby rescinded; provided however, that if any necessary expence be incurred in making the enquiries or adjustments referred to, it shall be competent to the Judge on the completion of the enquiry or adjustment, to order payment of the amount of such necessary expence by one or both of the parties in the case as may appear just and proper.—*Reg. 13, 1821, Sect. 5.*

The whole of cls. 2, 3, 4, 5 and 6 of sec. 76, reg. 23, 1814, still in force except the 5th, which is hereby rescinded

544. In continuation of my letter of the 22d February last, I am directed to inform you that under the provisions of Section 76, Regulation 23, 1814, the Judge is competent to employ the Principal Sudder Ameens in the same manner as other Sudder Ameens in the adjustment of accounts, or in the investigation of disputes, or special matters of account, fact or usage, connected with the execution of decrees passed in the Judge's court; but that under the Regulations in force no authority exists for referring to such officers application for the execution of any other decrees than those passed in the courts of the Sudder Ameens and Moonsiffs. [*By Act V. 1836, applications for the execution of decrees generally may be referred to Principal Sudder Ameens*] —*Con. 761, West. C. 22d Feb, Cal. C. 15th March 1833.*

P. S. A. and S. A. may be employed in adjusting accounts & investigating disputes on matters of account, fact, and usage

545. I am directed by the Court to acknowledge the receipt of your letter of the 15th instant.

Edm



requesting the opinion of the Court regarding the applicability of Clauses 1, 2, 3, 4 and 6, Section 76, Regulation 23, 1814, to Principal Sudder Ameens.—In reply, I am directed to inform you that although the clauses in question are not expressly declared applicable to Principal Sudder Ameens, the Court are of opinion that under the general spirit of Regulation 5, 1831, they should be considered applicable to those officers in common with other Sudder Ameens — *Con. 815, West. C. 23d Aug, Cal. C. 1st Nov 1833*

Cases in which native judges are, or are not, entitled to their travelling expences

546. The Native Judges are not entitled to any allowance for travelling expences or other account in cases "in which, for their own satisfaction or at the request of the parties, they may deem it proper to visit and inspect the property in dispute, or to make enquiries in regard to it on the spot." The court however consider that those authorities are entitled to the payment of their expences when deputed to make local enquiries by a superior court.—*Con. 1172, 14th Sept. 1838.*

Courts empowered to refer certain rent or revenue accounts to the collectors for report

547. In causes concerning rent or revenue, or other matters heretofore cognizable in the courts of Maal adawlut, between proprietors of land, or farmers of land holding their farms immediately of Government, and their respective dependant talookdars, under-farmers or ryots; or between dependant talookdars and their under-farmers or ryots; or between under-farmers farming lands of proprietors of land, or of farmers of land who farm their lands immediately of Government, or of dependant talookdars, and their dependant talookdars, under-farmers or ryots, or between other persons concerned in the collection or payment of Land rents, or revenues, either as principals or sureties, the Judge is empowered to refer to the Collector for his report, any accounts the adjustment of which may be necessary towards the decision of the suit. The reference is to be made to the Collector, by a precept under the signature of the Judge and the seal of the court, in which shall be specified, the accounts referred, and the papers which the Judge may think it necessary to send in elucidation of them, and the time by which the report is to be made. The Judge may likewise command the parties or their vakeels, and any witnesses they may have to produce, to appear before the Collector, that he may examine them regarding the accounts, and also empower the Collector to administer the customary oaths to the witnesses, or to examine the parties on oath, if they shall agree to be so examined. The Collector shall submit his report on the accounts to the court by the prescribed time attested by his official seal and signature, or assign his reasons for not having been able to complete it by the period directed. The Judge, upon the receipt of the Collector's report shall either confirm, set aside or alter his adjustment of the accounts, or pass such decision respecting them, as may appear to him proper. But the rules in this section are not to extend to empower the Judge to refer to the Collector any accounts relating to suits in which he or any of his public officers, or private servants, or Government, may be a party. —*Reg 8, 1794, Sect. 13.—Benares Reg. 54, 1795, Sect. 2.—Crd and Comy Prov. Reg 7, 1803, Sect 2*

Judges prohibited referring accounts to the collector in suits in which he, or any of his officers or servants, or govt may be a party

The civil courts may issue precepts to the collector to carry their orders into effect, and to return the precept duly executed

548 I request that you will be pleased to obtain for me the opinion of the Court whether there would be any objection to the Zillah court issuing precepts to the Collectors, directing them to carry their orders into effect within a period fixed by the court, or to assign a reason for the order not being completed at the period prescribed by the court.—*Reply.*—I am directed

by the Sudder Court to acknowledge the receipt of your letter, No. 158, under date the 23d instant, and in reply to acquaint you that they are not aware of any objection to the measure which you have suggested, of requiring the Collector to carry into effect the orders of your court, and to return the precept, issued therewith, duly executed within a certain period, or to shew good and sufficient cause for the delay — *Con. 968, West. C. 31st July, Cal. C. 21st Aug. 1835.*

549. The Zillah and City courts of Dewanny adawlut and Provincial courts of appeal are authorized, whenever they may have occasion to refer to any of the registers prescribed by the above Regulations or by the present Regulation, to require from the Collectors the production of the original register, or an attested copy of such part thereof as may contain the required information. The Collectors, on the receipt of such requisition are immediately to transmit the original register if it can be sent without inconvenience, under the care of one of their Native officers, in whose custody it is to remain till returned; or if the original register cannot be conveniently sent, are to transmit without delay an accurate copy of such part thereof as may be required, under the attestation of their official signature. — *Reg. 8, 1800, Sect. 15.*

550. Pursuant to the orders of Government, the Court are pleased to direct that you will submit through them all references you may have to make for the opinion of the Advocate General on points of English law — *Civ. Ord. 21st April 1843*

*For the rules regarding the deputation of Amerns to make local investigations, vide Chapter II Section 26.*

## SECTION XXVIII.

### *Zillah and City Courts—Punishment of Frivolous and Vexatious Suits*

551. If any person shall commence a suit in any Zillah or City court of Dewanny adawlut, which shall appear to the Judge to be frivolous, vexatious, or groundless, he is not only to dismiss the suit, with such costs as he may deem it equitable to award against the plaintiff, but is to fine him in such amount as he may think proper, upon a consideration of the nature of the case, and the situation and circumstances in life of the offender, and commit him to close custody until he pays the fine — *Reg. 3, 1793, Sect. 12.—Benares Reg. 7, 1795, Sect. 7—Cal and Comy Prov Reg. 2, 1803, Sect. 3*

552. As the law now stands, in cases coming under the provisions of Section 12, Regulation 3 of 1793, the party fined is liable to be committed to close custody until the amount be paid. — *Con. 1096 Cal. and West. C. 7th July 1837.*

553. The Civil courts are not competent to impose fines on covenanted officers of Government for official acts performed by them in the course of their duty, provided such acts be done by the express orders of superior authority — *Civ. Ord. Cal. and West. C. 25th Jan 1833, par. 1.*

If a covenanted officer institute a suit without such orders, which is adjudged vexatious, he may be fined.

554. If a covenanted officer of Government institute a suit without the sanction of superior authority, and such suit be adjudged to be vexatious, the court is competent to impose a fine upon him for so doing.—*Ibid*, par. 2.

A covenanted officer, instituting a suit by such orders not liable to a fine.

555. A covenanted officer of Government instituting a suit with the sanction of a board or superior authority, which, by the Regulations, he is bound to obey, is not liable to fine, although, in the judgment of the Court, the suit be vexatious.—*Ibid*, par. 3.

A court cannot fine a board, &c. for ordering a suit to be instituted, tho' deemed vexatious.

556. A court is not competent to impose a fine on the board or superior authority for directing a subordinate officer to institute a suit which, in the judgment of the court, is vexatious.—*Ibid*, par. 4.

An appellate court cannot fine a respondent in an appeal case which that court deems vexatious.

557. An appellate court is not competent to impose a fine on the respondent in an appeal case, for having instituted in the lower court a suit which the appellate court may consider to have been vexatious.—*Ibid*, par. 5.

## SECTION XXIX

### *Zillah and City Courts.—Assistance of Respectable Natives in the Trial of Civil Suits*

The G. G. in C. de- clared competent to invest any European officer presiding in a civil court, with the powers specified in the following section of this regulation.

558. The Governor General in Council is hereby declared competent to grant the powers specified in the following section of this Regulation to any European officer presiding in a court for the administration of civil justice, such powers to be exercised either in any particular suit, in any specified district, or generally by such officer in any suits that may come before him, and in any part of the country where he may be employed. Provided that it shall always be competent to the Governor General in Council to revoke and annul the grant of such powers whenever he may see sufficient cause for so doing.—*Reg. G. 1832. Sect. 2*

Europeans presiding in civil courts, and thus empowered, may avail themselves of the assistance of respectable natives in the trial of suits.

559. In the trial of civil suits, original or appeal, it shall be competent to every court, in which an European officer thus empowered presides, to avail itself of the assistance of respectable Natives in either of the three following ways.—*Ibid*, Sect. 3. Cl. 1.

As a panchaet

560. First, by referring the suit or any point or points in the same to a panchaet of such persons, who will carry on their enquiries apart from the court and report to it the result. The reference to the panchaet and its answer shall be in writing, and shall be filed in the suit.—*Ibid*, Cl. 2.

As assessors.

561. Or secondly, by constituting two or more such persons assessors or members of the court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each assessor shall be given separately and discussed; and if any of the assessors, or the authority presiding in the court, should desire it the opinions of the assessors shall be recorded in writing in the suit.—*Ibid*, Cl. 3.

As a jury.

562. Or thirdly, by employing them more nearly as a jury. They will then attend during the trial of the suit, will suggest as it proceeds such points of enquiry as occur

to them; the court, if no objection exists, using every endeavour to procure the required information, and after consultation will deliver in their verdict. The mode of selecting the jurors, the number to be employed, and the manner in which their verdict shall be delivered, are left to the discretion of the Judge who presides.—*Ibid*, Cl. 4.

563. It is clearly to be understood, that under all the modes of procedure described in the three preceding clauses, the decision is vested exclusively in the authority presiding in the court.—*Ibid*, Cl. 5.

In all such cases the decision vested exclusively in the authority presiding in the court.

564. It will be observed that a large discretion is vested in the presiding officer. He is left to select either of the three modes indicated, or altogether to reject them, and if he select either of the modes, the particular manner in which it is to be carried into effect is left to his own determination. It need only be further remarked, that no power of compulsion is granted by the Regulation. To this point the attention of all the public functionaries should be especially called, and they should be clearly informed that by no construction of Regulation 12, 1825, which enjoins punishment for contempt of court, or any other enactment, are they authorized to compel the attendance of persons, who may be reluctant voluntarily to render their services. They are empowered to invite the services of Natives as arbitrators, assessors or jurors, but by no means to compel them.—*Civ. Ord. West. C. 16th Nov. 1832, Cal. C. 18th Jan. 1833, par. 3*

Explanation of the mode in which the above regulation is to be carried into effect.

565. The requisition of oaths from persons so employed is not considered to be necessary, and is never to be enforced. His Honour in Council is disposed to think that it will be wise to abstain from proposing them.—*Ibid*, par. 4

Persons thus employed not required to take an oath

566. The Court are therefore requested to intimate to the civil Judges in all those districts into which the provisions of Regulation 5, 1831, have been introduced, that they are considered also authorized to use the discretion conferrible under Section 2, Regulation 6, 1832. This power will also attach to all their successors, whether temporary or permanent, and will be considered as naturally consequent on nomination to the appointment. The Judges of the Provincial courts are also invested with the powers, and the Court of Sadler dewanny adawlut are, of course, considered competent to use them if at any time an opportunity should present itself.—*Ibid*, par. 6.

The civil courts are authorized to use the discretion conferrible under reg. 6, 1832 sec. 2

## SECTION XXX

### *Zillah and City Courts—Contempts*

567. If any person shall be guilty of contempt of court in open court, or of undue arrogations of the authority of the court, or of illegal exertions of judicial authority in his own cause, the court is immediately to punish the offender by fining him in a sum not exceeding two hundred rupees, and keeping him in custody until the fine shall be paid. The courts are to regulate the amount of the fines which they may impose under this section according to the situation and circumstances in life of the offenders.—*Reg. 1, 1793, Sect. 21—Benares Reg. 8, 1795, Sect. 2—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 22.*

Courts to have persons guilty of contempt, arrogation of judicial authority, or illegal exertions of it in their own cause

568. Whereas sufficient provision is not made for repressing obstructions to justice committed in the courts of the East India Company.—It is hereby enacted, that all

All persons using menacing gestures or otherwise

obstructing justice in the presence of any zillah or city magistrate, joint magistrate, &c. or any superior or inferior court, civil or criminal, may be fined not exceeding 200 rs., or if not paid imprisoned for one month. Party aggrieved may appeal within one month. Party, if not proceeded against under this act, may be indicted in her majesty's supreme court.

persons whatsoever, whether generally amenable to the courts of the East India Company or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any zillah or city Magistrate, Joint Magistrate, or other officer under a Magistrate empowered to try criminal cases, or any superior or inferior court, civil or criminal, of the East India Company, shall be liable to be fined by the authority whose proceedings are obstructed to any amount not exceeding 200 rupees, or in case such fine be not paid to be imprisoned for any period not exceeding one month. Provided, that from the award of punishment in such cases an appeal shall lie, if preferred within one month, to the authority, civil or criminal, appointed by law to hear appeals in all other cases from the decisions of the officer by whom the fine was imposed; and provided also, that notwithstanding anything in this Act it shall be lawful to indict any person amenable to Her Majesty's Supreme Courts as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding shall have been had against the offender in the court where the offence was committed, but not otherwise.—*Act XXX. 1841, Sect. 1.*

Repeals sec. 12, the further proviso in sec. 74, reg. 23, 1814, cl. 2 and 3, sec. 5 and 6, reg. 12, 1825

569. And it is hereby enacted, that Section 12. the further proviso contained in Section 74. Regulation 23, 1814. clauses second and third, Section 5 and Section 6 Regulation 12 of 1825. of the Bengal code. are repealed — *Ibid. Sect. 3.*

## SECTION XXXI

### *Zillah and City Courts—Decrees, their Contents and Preparation.*

When the court is to give judgment

570 When the parties have been heard, and the witnesses on both sides examined, and the exhibits received and considered, the Judge is to give judgment according to justice and right, and is to order costs to be paid to the party in whose favour the decree may be made.—*Reg. 4, 1793; Sect. 7.—Benares Reg. 8, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 9*

Judges to act according to justice, equity, and good conscience, in cases for which no specific rules exist

571 In cases coming within the jurisdiction of the Zillah and City courts for which no specific rule may exist, the Judges are to act according to justice, equity, and good conscience —*Reg. 3, 1793, Sect. 21.—Benares Reg. 7, 1795, Sect. 11.—Ced. and Cong. Prov. Reg. 2, 1803, Sect. 17.*

In cases of bankruptcy, civil courts will exercise the discretion vested in them by reg. 3, 1793, sec. 21.

572 I am directed by the Court to acknowledge the receipt of your letter of the 8th instant, requesting their opinion as to the power of Civil courts in regard to bankruptcy, and to inform you in reply that as the Regulations do not contain any specific provisions on the subject, you should exercise the discretion vested in you by Section 21, Regulation 3, 1793, in any case that may come before you, leaving the party dissatisfied with your orders to appeal therefrom to this court.—*Con. 716, 21st Sept. 1832.*

A plaintiff consenting to the settlement of his suit by the sworn statement of the defendant, cannot object to a decree founded on it

573. A plaintiff, consenting through his duly appointed vakeel to the settlement of his suit in court, by the statement on oath of the defendant, cannot object to a decree founded on such statement.—*S. D. A. Sel. Rep. 29th Aug. 1843, vol. 7, p. 130.*

574. The Zillah and City courts are prohibited decreeing the payment or satisfaction of any sum due on a tumusook or bond, which may have been entered into after the 28th March, 1780, unless the bond shall be proved to have been executed in the presence of two credible witnesses, or the payment of the sum demanded on the bond, or some other valuable consideration for it having been received, shall be proved to the satisfaction of the court. But the restriction contained in this section is not to extend to any bills of exchange, receipts or notes of hand, in the determination on which the custom of the country is to be abided by.—*Reg. 3, 1793, Sect. 15.—Benares Reg. 7, 1795, Sect. 9.*

Decrees not to be given for sums of money on bonds, which may not have been executed in the presence of two credible witnesses, unless the sum or a valuable consideration shall be proved to have been given.

Cases to which this restriction is not to extend.

575. The Judges of the Zillah and City courts are to insert in their decrees the names of the witnesses whose depositions may have been taken, the title of every exhibit read in the cause, and the amount of the annual produce of the land, or the sum of money, or the value of the property or thing decreed.—The decree is to be sealed with the seal of the court, and signed by the Judge, and dated on the day on which it may be passed.—*Reg. 4, 1793, Sect. 26.—Benares Reg. 8, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 27.*

What the decrees of the courts are to contain.

To be sealed with the seal of the court, and signed by the judge, and dated on the day on which they may be passed.

576. The Court of Sudder dewanny adawlut having observed in several instances, a want of due attention to that part of Section 26 of Regulation 4, 1793, which directs the Judges of Zillah and City courts "to insert in their decrees the names of the witnesses whose depositions may have been taken; the title of every exhibit read in the cause, and the amount of the annual produce of the land, or the sum of money, or the value of the property or thing decreed;" particularly to the latter part of this rule, an observance of which is essentially necessary to enable the Court to judge whether decrees presented to them, with petitions of appeal, are appealable or otherwise; you are therefore desired to require from the Judges of the several courts within your division, the strictest observance of the above rule in future; and if, agreeably to Section 4 of Regulation 4, 1793, any objection should have been made by the defendant to the plaintiff's statement of the cause of action as appealable to the Sudder dewanny adawlut, the determination passed upon such objection, or the amount declared thereby to be the real cause of action is also to be stated in the decree, for the Court's information.—*Cir. Ord. 27th April 1796.*

The strictest attention is enjoined to reg. 4, 1793, sec. 26.

577. Whereas, it is expedient that the decision of Courts of justice, and the reasons for the decision should be written and signed by the Judge at the time of pronouncing his decision, and in the vernacular language of the Judge:—It is hereby enacted that in all the Presidencies so much of all decrees as consists of the points to be decided, the decision thereon and the reasons for the decision, and all injunctions for the revision of decrees in regular suits, and all orders for reviews of judgment, which shall be passed by Judges of the Sudder courts, or by Judges of Zillah and City courts, or by subordinate or Assistant Judges of zillahs, shall be written originally in English, and signed by the Judge or Judges at the time of pronouncing such decision and orders, and shall be translated into the vernacular language, commonly used in the court wherein the suit to which the decree or order relates, shall have been instituted; and the translation shall be incorporated in the decree.—*Act XII. 1843, Sect. 1.*

In decrees of sudder court, &c. the points to be decided, the decision, and reason thereof, injunctions for revision of decrees, and orders for review of judgment, shall be written in English and signed by the judge, and afterwards translated into the vernacular language, &c.

Copy of a decision recorded in English under act 12, 1843, must be given on application.

578. Copy of a decision recorded in English, according to Act XII. 1843, must be given on application.—*Rep. Sum. Cases, 8th June 1846, p. 80.*

Instructions relative to the requirements of act 12, 1843, to secure uniformity of practice.

579. It has been ascertained, that diversity of opinion prevails in regard to the requirements of Act XII. of 1843, and it has been deemed requisite in consultation with the Sudder dewanny adawlut for the North-Western Provinces, to promulgate instructions on the subject for general observance, with a view to secure uniformity of practice — *Cir. Ord. 16th Aug. 1844, par. 1.*

All decisions and orders specified in sec. 1 and 3 with the reasons for them, must be written by the judge with his own hand, signed when pronouncing the decision, and translated into the N. language.

580. The Courts of Sudder dewanny adawlut have ruled, that the terms of the Act in question render it obligatory on Judges of all denominations to record their original decisions and the reasons thereof, in their own hand-writing, signing them agreeably to the provisions of the Act, "at the time of pronouncing such decisions," and causing them to be correctly "translated into the vernacular language commonly used in the court, wherein the suit to which the decree or order relates, shall have been instituted, this injunction, it will be understood, has reference to all the decisions and orders specified in Sections 1 and 3 of the Act respectively." — *Ibid, par. 2.*

The decision and the reason, drawn out by the N. judge in the vernacular language, must be filed with the record and incorporated with the decree.

581. Where the vernacular language, and that used in the subordinate Civil courts are identical, the translation may of course be dispensed with, but the decision and the reason thereof, drawn out originally in the hand-writing of the Native Judge should be filed with the record of the suit to which it relates, and incorporated in the final decree.—*Ibid, par. 3.*

The civil judges will report whether these instructions have been obeyed.

582. The civil Judges are desired to ascertain and report, after a suitable interval, that these instructions have been practically introduced, issuing such precautional injunctions on the subject, as they may deem fitting.— *Ibid, par. 4.*

The decisions of judges of all grades will be copied into a book and signed by the judge.

583. With a view to facility of reference, the Court direct that the decisions recorded by Judges of all grades in their own hand, in conformity to Act XII. 1843, be copied into a book, consecutively, by a writer or mohurrir, and signed by the deciding officer in attestation of the correctness of the transcript. An abstract index, in the subjoined form, will be attached to the book :—

Form of the abstract index.

Number of the case and year	Names of the parties.	Substance the plaint.	Orders in the case and date	Deciding Judge	Remarks
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—*Cir. Ord. 28th Feb. 1845, par. 1.*

When the entries in the book will commence, and the decisions of the subordinate judges be forwarded to the judge's office for deposit.

584. The entries in this book will commence with the decisions of last month. The decision books of the subordinate court will be forwarded annually to the Judge's office for deposit.—*Ibid, par. 2.*

A copy of the decisions of the civil judges under act 12, 1843, to be sent for publication monthly.

585. The Government having been pleased to determine that the decisions of the zillah Judges, recorded in English under Act XII. 1843, shall be printed monthly at the Presidency I am directed by the Court to request that, from the 1st May next, the decisions of your court, instead, of being copied into a book, in the manner directed by the Circular order of the 25th

February, 1845, be transcribed on separate sheets of the paper, and forwarded, at the end of each month, to this office, with a view to their being sent to the press. Each decision is to be copied as soon after it is passed, as may be practicable, so as to allow the whole of the decisions to be despatched within a day or two of the close of the month. Proper care is to be taken in your office to ensure the perfect accuracy of the transcription.—*Cir. Ord. 17th April 1846, par. 1.*

586. When there are no decisions in any month, the circumstance is to be reported to the court, by the Judge; and if there be no Judge, by the officer in charge, immediately on the expiration of the month.—*Ibid, par. 2.*

When there are no decisions in the month, the fact is to be reported to the court.

587. A deceased Judge having left a decision unsigned, his successor was directed to examine the vakeels of the parties in whose presence the decision was given, and the person who wrote it out, and compare it with any note book in the hand-writing of the late Judge which might be forthcoming; and, unless the result of the enquiry should lead him to doubt the genuineness of the decision, to sign it, making a short memorandum explaining why it was signed by him.—*Con. 910, 17th Oct. 1834.*

Course of procedure where a deceased judge has left a decision unsigned.

588. On the 9th May last, Mr. Shakespear directed the lower court, in a case in which the separate liabilities of several defendants holding under distinct titles, were not mentioned in the decree, to amend the same, by inserting the amount due by each defendant, in order that the parties concerned might not be debarred from their individual right of appeal.—*Con. 849, 20th Dec. 1833, par. 4.*

The separate liabilities of several defendants, holding under distinct titles, must be inserted in the decree.

589. It was further held, that a decree for landed property should specify in detail the property of which it awards possession, without referring to any other documents to determine what that property is.—*S. D. A. Sel. Rep. 3d July 1841, vol. 7, p. 41.*

A decree for landed property must specify in detail the property of which it awards possession.

590. The decrees of a court below in favour of a Hindoo widow for possession of her husband's landed property, amended on the ground of their not having specified the nature of her interest, and the mode in which the property should be disposed after her death.—*S. D. A. Sel. Rep. 5th Nov. 1821, vol. 3, p. 114.*

What a decree in favor of a Hindoo widow for possession of her husband's estate should comprise.

591. To enable the Court of Sudder dewanny adawlut duly to exercise the powers hereby vested in them, the several courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force which require them to record the point or points at issue between the parties and the grounds on which their judgment or orders may be issued.—*Reg. 9, 1831, Sect. 2, Cl. 7.*

Subordinate courts strictly enjoined to record the point or points at issue between the parties and the grounds of their judgment.

592. The Courts of civil judicature are to insert in their decrees all sums paid or payable by the parties under the Regulations, on account of fees or stamp duties, as well as on account of compensation for the expence of witnesses, and of subsistence money to peons employed in serving the processes of the courts, and of all other costs and expences of the suit. Such costs and expences shall be ultimately charged to the parties cast, or to the parties respectively, in such proportions as the court may deem equitable.—*Reg. 27, 1814, Sect. 27.*

All legal expences and costs to be included in the decree and to be charged to the parties in such mode as may appear equitable.



## SECTION XXXII.

*Zillah and City Courts—Decrees—Consolidated Rules regarding their Contents and Preparation.*

The decrees of the lower courts will in future be prepared according to the following rules.

593. As the decrees of the lower courts are not written in a regular and uniform manner, and as much time both of the court and the pleaders is wasted, of the former in seeking for the matter stated in them and in the documents filed, and of the latter in preparing the grounds of regular or special appeals, and in examining the nature of the evidence, both oral and documentary, it is therefore ordered, that in future the decrees of the lower courts be prepared according to the following rules and the annexed form.—*Cir. Ord. 12th Feb. 1847, par. 1.*

The paper on which the decree is to be engrossed.

594. The paper, on which the decree is to be engrossed, shall have a lateral margin of one inch on either side, and a space of about five or six inches at the top shall be left blank for the purpose of receiving the seal and signature of the deciding or attesting officer.—*Ibid, par. 2.*

Particulars to be given at the head of the decree.

595. At the head of decrees passed in original suits, shall be stated the number of the case "*Original*," and whether instituted in the trial court, or referred by a superior court or transferred from a court of co-ordinate jurisdiction, and in each case the designation of such court, as well as the aggregate value of the claim, shall be specified,—immediately after these particulars will follow the heading of the decree in the following form: "Decree of the court of \_\_\_\_\_ before \_\_\_\_\_ Judge, Principal Sudder Ameen, or Sudder Ameen, or Moonsiff of \_\_\_\_\_; passed on the \_\_\_\_\_ 18—, corresponding with the \_\_\_\_\_ of \_\_\_\_\_ 12 \_\_\_\_\_ Fussely, or Hijree, or Bungaleh," according to the eras locally known and current. In the decrees of those courts which have only original jurisdiction, the word "*original*" may be omitted.—*Ibid, par. 3.*

Decrees of courts which have only original jurisdiction.

Names of all the plaintiffs, all the defendants, all third parties, and of their pleaders.

596. Subsequently to the heading, as above, will be exhibited on the one side the names of all the plaintiffs, and all the defendants, and of all third parties (sozardars) if there be any, without the word etcetera or others, and on the other side, opposite to the names of the parties respectively the names of their pleaders, or if any of the parties plead personally, the word "*in person*" (*asalutum*) shall be entered opposite his name, and his presence or absence shall be certified in the same place by the addition of "*bazir*" or "*ghair bazir*."—*Ibid, par. 4.*

Entry to be made when the party pleads in person.

Description of the claim, and all other particulars regarding it which are to be specified.

597. A vacant space being left to the right and left of the paper, the description of the claim, and of the thing claimed, its valuation, and the foundation of the claim will then be entered with a specification of the order or orders of which the plaintiff seeks reversal, and of the commencement or close of the period to which the claim relates, in cases calling for such specification, (as claims for interest, *wasilat*, adjustment of accounts, or rents,) if the amount of the claim have been increased or reduced by a supplementary plaint, the fact shall be here stated in the decree, only of those courts of course that are entitled to receive supplementary plaints, and the whole amount of the claim, as thus adjusted, shall be distinctly declared.—*Ibid, par. 5.*

Note of the attendance or absence of the parties or their pleaders.

598. After the above will be stated the attendance or non-attendance of the parties or their pleaders, correspondingly with the statement given in the final proceeding; 2dly, parties

lars regarding the date, both according to the English calendar and the eras locally current, on which the suit was instituted, and if the plaintiff be a pauper, the date of his application to be permitted to sue in that capacity, and of his pauperism being admitted; and 3dly, the date on which the petition of plaint may have been filed or received in the office, and 4thly, an abstract of the grounds of suit. It will not be necessary to notice the several steps taken to prepare the case for adjudication, or to state the order in which the several papers were filed,\* except in particular cases, as for instance when the suit may have been referred by a higher or transferred from a tribunal of equal degree, or when it may relate to property situate in different jurisdictions, though based on the same cause of action (in which case the acquisition of the Sudder court's authority for its hearing and decision in that particular court agreeably to Circular order No. 29, dated 11th January, 1839, must be mentioned), or when Government may be one of the defendants to the action, in which case the assent of the Commissioner to the formal institution and trial of the suit under Regulation 2 of 1826, must be stated; in this place, should the circumstances of the case be such as to require it, the death of any of the parties to the action and the substitution of his heir, and particulars preliminary to the adjudication of the suit *ex-parte* in the event of the plaintiff's claim being decreed either in whole or in part, as well as the reason of any witnesses not having been summoned, or if summoned of their evidence not having been recorded, should be entered.—*Ibid*, par. 6.

Date of institution of suit; and if the plaintiff be a pauper, of his application to sue in that capacity and of its admission.

Date of the filing of the petition of plaint

Abstract of the grounds of the suit.

Farther particulars to be inserted in this place.

599. The *substance* of the petition of plaint is then to be given, all redundancies both of language and matter being carefully eschewed, and will include a specification of the date, on which the cause of action according to the plaintiff's statement arose, as well as genealogical tables if filed, the names of the defendants at length, with the parentage of those, who may have the same name (if that be ascertainable from the plaint or the proceedings in the case,) and the place of residence, of all the reasons given by the plaintiff for including among the defendants any person out of possession of the property sued for, and the pleas urged by him for admission of the suit notwithstanding the expiry of the period, allowed by the statute, of limitations for the cognizance of civil actions. After this, the substance of the supplementary plaint, if any have been entered, with the date of its presentation will be stated with the same regard to conciseness, (notwithstanding that it do not follow next in order according to date of presentation) and the property claimed will be here specified: then will follow an abstract of the answer, and the supplemental answer (with date of presentation as in the case of a supplemental plaint) including only those parts which do actually reply to the subject matter of the plaint; the substance of the replication, if it contain any matter touching on the statements of the defendant's answer, and similarly of the rejoinder, with dates of their presentation respectively, will be next entered, and last of all the abstract of the petitions and objections of third parties will be stated. If no rejoinder be filed, the fact should be mentioned.—*Ibid*, par. 7.

Substance of the petition of plaint with various other details.

Substance of the supplementary plaint.

Abstract of the answer, and supplementary answer

Substance of the replication.  
Substance of the rejoinder.

Abstract of the petitions and objections of third parties.

600. Next in order will be inserted a brief abstract of the proceedings prescribed by Section 10, Regulation 26 of 1814, in the decrees only of those courts of course, to which that enactment applies (vide Construction 1226, and Circular order No. 163, dated 20th August, 1841.)—*Ibid*, par. 8.

Abstract of the proceedings prescribed by reg. 26. 1814, sec. 10.

\* This object is attained by Circular order, No. 33, dated 16th December, 1843, (W. P.) and L. P. No. 79, dated 3d February, 1845.

Last of the documents, filed and the names of the witnesses called by the plaintiff. Case in which the substance of a document is to be given.

Documents presented and witnesses subpoenaed by the defendant.

Orders rejecting applications of the parties.

Stamp fines inflicted on the pleaders.

Orders admitting a review of judgment.

Notice of ameen's reports.

Copy of *futwa*, or *bewustah*, or award of arbitration, or *soolunamah*.

The ground of judgment, and the evidence on which it is based.

In the order of the court, the thing decreed is to be stated when it does not correspond with the claim preferred.

The exact sum, principal and interest decreed; costs of the parties.

The title of each paper to be inserted in the margin of the decree, a line to be drawn, that any particular matter may be easily found.

Particulars to be inserted in the decrees of the appellate courts.

601. A list of the documents filed and the names of the witnesses called on the plaintiff's part, with the titles and numbers of the several papers in order of presentation, and a specification of the matter, which they were respectively intended by the plaintiff to prove, will here be entered, and the substance of any document which may be declared by the plaintiff to be the foundation of his claim, or to be adimicular to its proof, should be given, provided that the purport and the terms of the said document be contested. In like manner the documents presented and the witnesses subpoenaed on the part of the defendant should be particularized, and any orders rejecting applications of the parties for the admission of proofs offered, or fining pleaders for filing documents on unstamped paper or paper of insufficient value, or returning documents to be stamped under Circular order No. 179, dated 31st January, 1842, or relating to the admission of review of judgment (if that have occurred,) with their respective dates should be mentioned, and if the decision of the case turn on the report of an ameen, its substance and the fact of his having been sworn to the faithful discharge of his duty (an observance which is essential\* to the reception of his report as evidence) should be stated with its date. Next in order will appear a copy of the *futwa* or *bewustah*, or the award of arbitrators, or the *soolunamah* of the parties, if the case have been determined with special reference to such papers, and, subject to the same condition, the enquiries made from parties or their pleaders, and the answers received, together with the date of the proceeding in which they are recorded, will be entered. Here will be recorded the reasons, given by the deciding officer in the precise terms in which the judgment drawn up agreeably to Act XII. of 1843 may be expressed, and the Court would take the opportunity of warning the judicial functionaries to specify distinctly the grounds of their judgment, and the evidence, oral or documentary, on which it is based, and to state in their "order" the thing decreed, whenever the decree may not exactly correspond with the claim preferred, specifying the articles or portions of property or other thing claimed, which may have been exempted from the judicial award made in favour of the plaintiff.—*Ibid*, par. 9.

602. Immediately under the "order" will be entered an account, showing the exact sum, principal and interest, to which the plaintiff may have been declared entitled up to the date of decree, and subsequently to this account will be inserted the costs of the parties payable either at the time or thereafter in the event of appeal being preferred by the losing party.—*Ibid*, par. 10.

603. The civil authorities will be careful to insert the title of each paper, viz. plaintiff, answer, oral, interrogatory, or other matter in the margin of the decree, opposite that part in which the subject matter of each paper, &c. may be recorded, and at the beginning of the subject matter in question will draw a line (Hindce "*mud*," ) so that when any particular matter be sought for, it may be quickly found.—*Ibid*, par. 11.

604. In the decrees of the appellate courts, instead of the words "original," will appear "appeal regular" or "special appeal," with the number of the same, and the amount both of the original claim, and the claim in appeal, and the parties will be distinguished as plaintiffs, appellants, defendants, respondents, or vice versa, as the case may be. Next, the description of the claim, its amount or valuation, and its foundation, the attendance or non-attendance of the parties and their vakeels will be *shortly* adverted to, as directed above for the decrees of Courts of first instance, and after this will come an abstract of the judgment or judgments passed by

\* Vide Section 18, Regulation 3 of 1803, and Section 17, Regulation 4 of 1793.

the lower courts, and the substance of the reasons for appeal, and of the answer, with the dates on which they were filed respectively. With regard to any other papers, that may be presented, the rules already laid down for observance in the Courts of original jurisdiction will be followed, but it will be unnecessary to give an abstract of any other part of the record of the lower court than the judgment of the deciding officer.—*Ibid*, par. 12.

605. When the original decree shall have been prepared according to the above rules, the date of its being completed and ready for transcription, the date of notice thereof being given to the parties or their representatives, the date of first delivery of stamped paper, whether in whole or in part, for a copy of the decree, the date of delivery of additional sheets after the preparation of the decree, and notice given to the parties or their representatives, with the number of sheets, and the date of copy being ready, and of its being tendered or delivered to the parties or their representatives shall be entered on the back of the decree not only in figures but in words at length, and not only on the copies delivered to the parties but on the original decree, which is intended to be kept with the record of the case.—*Ibid*, par. 13.

Various particulars to be inserted on the back of the decree, not only in figures, but in words, when the decree has been prepared according to the above rules.

606. It is only necessary to add, that whenever a date which may affect the decision of the case, may be mentioned either in the heading, or in the body of the decree, the date corresponding thereto, which may be locally current, shall be invariably stated, and that the names of parties, as well as villages and pergunnahs, wherever occurring, shall be written in clear legible characters, each letter being correctly punctuated.—*Ibid*, par. 14.

When important dates are mentioned, the era locally current should be invariably stated; names must be written in clear legible characters & each letter correctly punctuated.

607. An abstract or recapitulation of the above instructions is published in the vernacular language for the guidance of the decree-writers, attached to the several courts. — *Ibid*, par. 15.

An abstract of these rules is published in the native tongue for the decree-writers.

### SECTION XXXIII

#### *Zillah and City Courts—Decrees—Copies furnished to the Parties.*

608. The Judge, or the Register, either at the time of making the decree, or on a subsequent day (of which the court is to give notice to the parties or their vakeels) within ten days after passing the decree, is to deliver or tender in open court to each party, or their vakeels, a true copy of the decree authenticated as above directed, with an endorsement made upon it by the Register of the date on which the copies may be delivered, and an entry of the delivery or tender, with the date on which it may be made, is to be inserted by the Register in the margin of the record opposite to the decree. If either of the parties, or their vakeels, shall not be present at the time the decree may be passed, and the prescribed copy of it may be produced in the court to be delivered, or shall not attend on the subsequent day which may be fixed for the delivery of the copies, after previous notice of the day shall have been given to them, or shall refuse to take the copy of the decree when tendered as above directed, the copy is to be deposited amongst the records of the court, and the cause of the non-delivery of it to the party, is to be noted upon it in writing, and in the margin of the record opposite to the decree, under the official signature of the Register.—*Reg. 4, 1793, Sect. 26.—Benares Reg. 8, 1795, Sect. 2.—Cod. and Cong. Prov. Reg. 3, 1803, Sect. 27.*

Judge or register within ten days, to tender in open court, a copy of the decree to the parties on a day of which previous notice is to be given.

Register to endorse on the decree the date on which it may be delivered or tendered.

Court how to proceed in the event of parties or their vakeels not being in attendance to receive a copy of the decree, or of their refusing to take it.

Every decree to be ready for transcription within ten days after it is passed

609: As regards your own court, it will be incumbent on you, and you are hereby directed to have every decree and final order prepared and ready for transcription within ten days after passing it.—*Car. Ord. Cal. and West. C. 20th Sept. 1839, par. 8.*

Stamped paper for copies of decrees.

610. Copies of decrees in all regular suits calculated in the manner explained under the head 'plaint,' when passed in the courts of the Registers, or zillah and city Judges, or by Sudder Amceus empowered to decide the same, will be charged *one rupee*.—*Reg. 10, 1829, Sect. B. Art. 2.*

Parties requiring a copy of a decree to furnish the requisite stamp paper.

611. For the purpose of obtaining an authenticated copy of the decree in such cases the party desiring it shall furnish to the court by whom the decision may have been passed, one, two or more sheets or rolls of the stamped paper prescribed in Section 19, Regulation 1, 1814, (*now Reg. 10, 1829*) as may be necessary for transcribing the decree.—*Reg. 26, 1814, Sect. 8, Cl. 8.*

Courts how to proceed when such stamped paper be furnished.

612. When such stamped paper shall be furnished, the Serishtadar or such other principal officer, as may be authorized by the court to discharge that duty, shall endorse on it the date of its being furnished, the name of the party on whose account it may be presented, and the number of the suit to which it may be intended to be applicable, and shall grant to the party a corresponding receipt for the same on unstamped paper; the copy of the decree shall then be prepared and duly authenticated, and shall be delivered or tendered to the party by whom the stamped paper may have been furnished, or to his vakel in open court, and the date of the delivery or tender of such copy shall be also endorsed on the copy.—*Ibid, Cl. 9.*

Care to be taken that the amlah do not detain the stamped paper. Information which the serishtadar will insert on the back of the copy of the decree, explaining the cause of the delay.

613 The Court having observed, that the *amlah* of the lower courts sometimes keep the stamped paper, supplied by the parties for copies of decrees, for months, without preparing the copies required, thereby unnecessarily prolonging the period allowed for appealing: direct me to request that you will take care that the officers of your court make no unnecessary delay in the execution of this part of their duty, and that you will cause the *Serishtadar* of the court to state by an endorsement on the back of the copy furnished, the information required by Clause 9, Section 8, Regulation 26 of 1814, with an explanation of the cause of delay, whenever the copy cannot be furnished within one month from the date of the stamped paper being supplied.—*Car. Ord. Cal. and West. C. 18th May 1832, par. 1.*

Instructions similar to the above to be issued to the subordinate courts.

614. You are requested to issue similar instructions to the courts subordinate to your authority.—*Ibid, par. 2.*

The time which elapses between the date on which the stamp paper was given in and the decree delivered or tendered, must be excluded in calculating the period of appeal.

615. The Court of Sudder dewanny adawlut have had before them your officiating Judge's letter, dated the 20th ultimo, with its Persian enclosure, stating that it has been the practice of your court, in calculating the periods limited for admitting regular appeals preferred direct to the court, not to allow the deduction of the interval, between a party furnishing the prescribed stamped paper in the Zillah court, and the copy of the decree being tendered or delivered to him as prescribed by Clauses 7, 8, 9, 10, Section 8, Regulation 26, 1814; and stating also his opinion, that it was decidedly intended by Clause 10, to provide for the deduction in question.—In reply, I am desired to observe, that the Court entirely concur with your officiating Judge in the construction which he has adopted, and that the deduction in question should be considered applicable to all, regular as well as summary and special, appeals.—*Con. 413, 3d March 1826.*

616. I am directed to acquaint you for the guidance of your own, and the Principal and the other Sudder Ameen's courts, that it has been ruled by the Court that as a general practice the whole of the stamped paper required for the copy of a decree, should be given in at once, by the party applying for such copy; but that if only a portion has been given before the preparation of the decree the entire quantity required shall be made up by the time the decree is ready for transcribing, and that no allowance on the score of deduction in calculating the time for appeal is to be made for any delay which may occur, after that period, in completing the quantity of paper needed.—*Cir. Ord. 8th May 1840, par. 1.*

If all the stamped paper be not given in by the time the decree is ready for transcription, no allowance in calculating the period of appeal will be made for any delay that may occur.

617. The decree-nuvec is to certify on the back of each decree, as soon as it may be ready for transcribing the date on which it was ready, and his having notified to the party requiring the copy what quantity of additional paper may be needed for engrossing the same—procuring, at the same time, a written acknowledgment of such intimation on the back of the original decree by the party or his vakeel. Should neither the party nor his vakeel be in attendance, the decree-nuvec is to report to the Judge, who will record the fact, after ascertaining its correctness, for future reference.—*Ibid, par. 2.*

Intimation to be given by the decree-nuvec to the party of the date on which the decree was ready—and he will certify this on the back of the decree.

618. From the period of his certificate, or from the date of the Judge's order recording the absence of the party and of any person on his behalf, until the date of filing such additional stamp, no allowance will be made in calculating the period of appeal; and if, in transcribing the copy of the decree, it should be found that a further supply of paper is required the same principle is to be followed in that case also. The latter contingency, however, I am desirous to say, ought not to occur, provided due care be exercised by and enforced from the copyist, in allotting to the transcript the same space of paper as was occupied by the original decree.—*Ibid, par. 3.*

From the period of this certificate till the filing of the additional stamped paper, no allowance of time to be given in calculating the period of appeal.

Mode of procedure if more stamped paper is required.

619. The Court take this opportunity of observing that, owing to the want of the requisite information on the back of copies of decrees and orders appealed from, doubts have frequently arisen as to the precise time an appellant is entitled to claim as a deduction from the period prescribed for appealing in consequence of the stamped paper given in for the copy of the decree or order remaining in the serishita of the lower courts, and also whether any delay which may have occurred is fairly attributable to the party petitioning for the admission of an appeal. The Court are accordingly pleased to direct that in future on the copy of every decree and order granted by you, you cause to be endorsed the particulars noted below, and that you strictly enjoin the observance of the same rule by the Principal Sudder Ameen, Sudder Ameen and Moonsiffs, within your jurisdiction.

Various particulars regarding the preparation of the copy to be endorsed on every decree and order.

#### *On Copies of Decrees or Judgments.*

On the — 1840, the original of this decree was signed.

On the — 1840, A. B., plaintiff (or defendant, appellant or respondent, as the case may be) gave in so many sheets of stamped paper for a copy of the decree.

On the — 1840, this copy was signed and sealed.

On the — 1840, the copy was delivered to —.

On the — 1840, copy of the decree was prepared and delivered to the pauper or other party, or, owing to his refusal to take it when tendered, deposited among the records.—*Ibid, par. 4.*

Particular instructions.

What stamped paper to be used for copies of decrees furnished to parties.

620. In explanation of clause second, Section 5, Regulation 1, 1814, it is hereby enacted that paper of European manufacture, bearing a stamp of the value specified in Section 19, Regulation 1, 1814. (*now*, Reg. 10, 1829,) shall be used for all copies of decrees in regular or summary suits, which may be furnished to the parties by the Judges, Assistant Judges, or Registers of the Zillah and City courts, by the Provincial courts, and by the Sudder dewanny adawlut.—*Reg. 26, 1814, Sect. 16, Cl. 1.*

On what paper copies of decrees for record are to be written.

621. Copies of decrees, which may be prepared by those courts, to remain with their own records, shall be written on stamped\* paper of European manufacture, of the same size and description as that, which may be stamped for the copies of decrees to be delivered to the parties.—*Ibid, Cl. 2.*

Copies of decrees intended to remain with the records of courts passing them to be written on unstamped paper of European manufacture

622. The Court, having recently had under their inspection some decrees of the lower courts the legibility of which has been destroyed, (by insects, damp, and frequent reference,) and attributing this serious inconvenience to the fact of such decrees having been engrossed upon Native paper: direct me to request your attention to Clause 2, Section 16 of Regulation 26 of 1814, whereby it is required that copies of decrees which are intended to remain with the records of courts passing the same, shall be written on unstamped paper of European manufacture—*Cir. Ord. Cal. C. 30th June, West. C. 4th Aug 1837*

Copies of papers made for records or official use not required to be written on stamped paper

623. Copies of proceedings and orders, accounts, statements, or other papers made for records of court, or for transmission to other courts, or public offices, may be written as heretofore on unstamped paper, except in cases in which it may be otherwise specifically provided for by the Regulations.—*Reg. 26, 1814, Sect. 16, Cl. 3*

Copies which individuals may be authorized to make for their own use, need not be written on stamped paper, but shall not be authenticated by any official seal or signature

624. It is hereby declared, that the provisions of Regulation 1, 1814 are not intended to preclude individuals from making for their private use and at their own expense, copies of judicial or revenue papers, with the permission of the court, Collector, or other public officer having charge thereof, on any paper which they may prefer; but if such copies be not made on stamped paper, they shall not be authenticated by the seal or signature of any court, Collector, or other public officer, and shall not be received as evidence in any Court of justice or in any public office whatever.—*Ibid, Cl. 4.*

#### SECTION XXXIV.

##### *Zillah and City Courts—Decrees—Copies to be furnished to the Public Authorities.*

In suits and appeals wherein govt. may be one of the parties, a copy of the decree to be sent, as soon as it can be prepared, to the secy. to govt in the jud. department.

625. In all original suits, or appeals, wherein Government may be one of the parties, the court which may pass judgment, whether for or against Government, shall in addition to the copies of decrees required by the existing Regulations to be delivered to the parties, transmit a copy of the decree, as soon as the same can be prepared, to the Secretary to the Government in the Judicial department, for the information of the Go-

\* This is evidently a misprint in the original Regulation. It should be "unstamped"

vernor General in Council. Such copies of decrees are not required to be upon stamped paper; but are to be duly authenticated by the official seal and signature of the Judges, by whom the same may have been passed; and are to be accompanied with an English translation.—*Reg. 2, 1805, Sect. 9.*

Such copies of decrees not required to be upon stamped paper, but to be duly authenticated, and accompanied with translations.

626. That the quinquennial register of landed property paying revenue to Government directed to be prepared by Regulation 48, 1793, may be kept complete, the Zillah and City courts are strictly enjoined to transmit to the Collector of the zillah and the Board of Revenue, a copy of every decree that they may pass, or which may be sent to them to be enforced by the Provincial courts of appeal or the Sudder dewanny adawlut, regarding any zemindary, independant talook, or other land, paying revenue immediately to Government, or in any wise concerning the possession of such land. The Judge is to transmit the copy of the decree within ten days after he may pass or receive it. The decree is to be attested with the signature of the Judge and the seal of the court, and is to be accompanied with a short abstract of it specifying the date of the decree, the names of the purgunnah or purgunnahs, the talook or talooks, the turf or turfs, the village or villages, or the portion of each, which may be decreed, the name or names of the person or persons last in possession, the person or persons to whom the lands may be decreed, and, if the land be decreed to two or more persons, the shares awarded to each person.—*Reg. 4, 1793, Sect. 9. —Benares Reg. 8, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 3, 1808, Sect. 11.*

Zillah & city courts to transmit to the board of revenue, and the collector of zillah, a copy of every decree regarding malgoosarce land, which they may pass.

And of every such decree that may be transmitted to them by the provincial et. of appeal, or the S. D. A., to be enforced together with an abstract of the decree

What the abstract is to contain.

627. It having been brought to the notice of the Court that the transmission to the revenue authorities, of copies of all decrees passed by the Civil courts regarding lands paying revenue to Government, under the provisions of Section 9, Regulation 4 of 1793, is productive of considerable inconvenience in consequence of the decrees being subsequently modified or reversed in the Courts of appellate jurisdiction, I am directed to request that in future you will furnish the revenue authorities with copies of those decrees only which are final and of which execution shall have been taken out. You are requested to communicate these instructions to the Native Judges of your district for their information and guidance.—*Civ. Ord. 5th Oct. 1838.*

The revenue authorities to be furnished only with decrees which are final, and of which execution has been taken out.

628. The Judges of the Zillah and City courts in the four provinces shall furnish the Collectors of the districts in which the land may be situated, and the Board of Revenue, with a copy of every decree in suits between individuals, which they may pass, or which may be sent to them by superior courts to enforce, by which the right in, or possession of, any lands held exempt from the payment of public revenue, under whatever description of grant the same may be so held, may be affected, in order that the Collectors may be enabled to make the necessary entries of the alterations in such right or possession, to be inserted in the quinquennial registers of lands held exempt from the payment of revenue, directed to be kept by Regulations 19 and 37, 1793, and 41 and 42, 1795. The copies of such decrees shall be transmitted by the Judge within twenty days after the same may be passed or received by him.—*Reg. 58, 1795, Sect. 3.*

Zillah & city courts to furnish copies of certain decrees by which the right to, or the property in, any lands exempted from the payment of public revenue may be altered



## SECTION XXXV.

*Zillah and City Courts—Decrees—Effect of previous Decrees and Decisions.*

The courts cannot decide a new suit contrary to a former final decree, or go into its merits.

629. The courts are not competent to decide a new suit contrary to the provisions of a former final decree, relative to the same property. The merits of that decree cannot be gone into.—*S. D. A. Sel. Rep.* 25th April 1826, vol. 4, p. 146.

The merits of the final decision of any competent authority cannot be questioned, on any ground.

630. Held that the courts are not at liberty to question the merits of a final decision of any authority having competent jurisdiction, whether on allegation of such decision being contrary to law or wrong as to the merits. The decisions here alluded to were passed by the Patna Council in 1777, and by the Patna City court in 1796.—*S. D. A. Sel. Rep.* 17th April 1826, vol. 1, p. 137.

A decision of the *Khalsa*, in 1773, upheld & a subsequent judgment of the Calcutta dewanny adawlut in 1785 pronounced illegal.

631. In a suit by the widow of a talookdar, for possession of the talook held by her husband, under an unexecuted decree in her favour, passed by the Calcutta Dewanny adawlut in 1785, it appeared that a prior claim which she had preferred before the *Khalsa*, in 1773, was dismissed on trial of its merits. On the ground, therefore, that the decision of the *Khalsa* was a judicial sentence, precluding the question being again agitated, the judgment of 1785 was pronounced illegal by the Sudder dewanny adawlut, and the claim dismissed.—*S. D. A. Sel. Rep.* 21st Aug. 1810, vol. 1, p. 307.

A decree of the provincial court for land passed during an appeal to the S. D. A. of another cause regarding the same property, and concealed from the S. D. A., cannot be affected by its decision.

632. A decree of the Provincial court, in a suit for landed property, passed during the appeal to the Sudder dewanny adawlut, of another cause relating to the same property, and concealed from the knowledge of the Sudder dewanny adawlut, cannot be affected by the eventual decision of the latter court.—*S. D. A. Sel. Rep.* 7th Sept. 1802, vol. 1, p. 61.

Appellant's claim to an estate not affected by incidental judgment against him in another case.

633. Appellant's claim to an estate not precluded from cognizance by incidental judgment against him in another suit.—*S. D. A. Sel. Rep.* 5th Nov. 1811, vol. 1, p. 355.

Case in which the plea of two previous decisions was overruled.

634. In a suit of A. against B. for lands, B. pleaded two previous decrees in his favour as barring the claim of A.; but, as the decision in those cases did not affect the merits of the present action, the plea of B. was overruled.—*S. D. A. Sel. Rep.* 1th March 1815, vol. 2, p. 49.

Case in which a judgment against one who had farmed the lands of a rindolu, was not deemed conclusive against the latter.

635. A judgment given against the dependant of a landed proprietor, who had taken a farm of his lands, by the desire of the proprietor, not held to be conclusive against the latter, as the suit was not defended under his directions, or with his knowledge.—*S. D. A. Sel. Rep.* 7th Feb. 1817, vol. 2, p. 223.

A claim brought 21 years after the decision of a case by the same plaintiff, against the same defendant, for the same property, deemed inadmissible.

636. A claim having been preferred by the sister, against the widow of a deceased Musulman, for half the property left by him, which was finally adjudged to be the widow's right in lieu of dower, and, twenty-one years after that decision, the same plaintiff brought an action against the same defendant for the same property, on the plea that, even supposing the dower to have amounted to the sum claimed, she had realized the full amount from the profits of the estate, it was held that the claim was inadmissible.—*S. D. A. Sel. Rep.* 9th Feb. 1820, vol. 3 p. 12.

## SECTION XXXVI.

*Zillah and City Courts—Razeenamahs, Soolunamahs and Compromise.*

637 Razeenamahs, ruffanamahs, soolunamahs, or the like, that is to say—Any written application, whereby or according whereunto, a suit pending in a Civil court shall be adjusted, or be capable of adjustment without argument in court, and award of the presiding Judge, or other officer, shall bear the stamp required for a pleading in the court wherein it may be filed.—*Reg. 10, 1829, Sch. B, Art. 10.*

Stamp on which razeenamahs, ruffanamahs, soolunamahs, & the like are to be written

638. If the suit be dismissed on such application before the pleadings have been completed, and the case called up, the plaintiff shall be entitled to claim from the court a certificate, stating the amount of stamp duty paid on the plaint, with specification of the number and endorsement of the paper filed, on presenting which to the Collector of the district, the plaintiff shall be entitled to receive back the entire amount of the said stamp duty—provided always there be no exception taken to the paper or endorsement thereon.—*Ibid.*

If the suit be dismissed before the pleadings have been completed and the case called up, the plaintiff will receive back the whole of the stamp duty

639. If the pleadings have been completed, and the case has been called up for decision, or is on the list of causes ready for hearing, the plaintiff shall receive a certificate as above for half of the amount of stamp duty paid on the plaint.—*Ibid.*

If the pleadings have been completed and the case called up, he will receive half the stamp duty

640. If the adjustment by razeenamah or soolunamah be such as to require decree to pass on which process of execution can be taken out, the plaintiff shall not be entitled to any refund of the stamp duty so paid.—*Ibid.*

If the adjustment by razeenamah, &c. be such as to require a decree, and execution of process, no stamp duty will be refunded

641. I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of a letter from you, dated the 17th ultimo, relative to a refund of the stamp duty, substituted for the institution fee, in cases decided in favour of the plaintiff on the acknowledgment of the defendant, without investigation of the merits. The Court observe, that, in such cases, where the plaintiff's claim is not disputed by the defendant, it may generally be expected that the suit will be adjusted by razeenamah, in which case the provisions in force for the return of the institution fee, or the stamp duty substituted for it, in suits adjusted by razeenamah would of course be applicable. But the Court are of opinion, that the existing Regulations do not authorize a return of the institution fee, or of the stamp duty substituted for it, in the case stated by you without a razeenamah.—*Con. 208, 1st June 1815.*

In cases decided in favor of the plaintiff, on the acknowledgment of the defendant, without investigation of the merits, the stamp duty will not be returned

642. I have the honour to request that you will obtain for me the opinion of the Court of Sudder dewanny adawlut on the following point, viz. whether the provisions of Section 10, Regulation 13, 1810, relative to the refund of the institution fee in cases adjusted by razeenamah, are to be considered as applicable to cases of dustbundaree, in which a plaintiff voluntarily relinquishes the prosecution of his claim.—*Reply.*—I am directed by the Court to acknowledge the receipt of your letter of the 7th instant, and in reply to inform you, that the refund of the stamp duty in lieu of the institution fee can only be sanctioned in cases in which a razeenamah has been regularly filed.—*Con. 977, 28th Aug. 1835.*

In cases of dustbundaree, where the plaintiff voluntarily relinquishes his claim, the stamp will not be refunded.

Observations regarding the filing of a "bazdaweh"

643. A doubt having arisen as to the admissibility of a claim to restitution of the stamp duty, levied on plaints and petitions of appeal, in cases in which the plaintiff or appellant may file a "bazdaweh," the Court request the attention of the civil authorities in the lower provinces to the following remarks—*Civ. Ord.* 23d Jan. 1846, *par.* 1.

Difference between a "bazdaweh" and a "razeenamah"

644. It has been sometimes argued, that a "bazdaweh" and razeenamah, or soolunamah, having the same effect of removing the pending suit from the file of the court, must be considered identical for all the purposes contemplated by Article 10, Schedule B, Regulation 10 of 1829 or in other words, that whether the instrument represent the act of one party, as a "bazdaweh," or of both parties to the suit, as a soolunamah, ruffanamah or razeenamah would do it, will equally entitle the party delivering it to refund of stamp duty.—*Ibid.* *par.* 2.

Definition of a "bazdaweh," a "ruffanamah," and a "soolunamah"

645. The majority of the two Courts of Sudder dewanny adawlut, however observe, that the adjustment mentioned in Article 10, Schedule B, Regulation 10 of 1829, and Section 2 of Regulation 13 of 1810 implies an amicable settlement of the claim by the mutual consent of both parties, and that, consequently, "bazdaweh," in its terms purport simply a withdrawal of the claim, or appeal on the part either of plaintiff or appellant, cannot be held to confer upon the party delivering it a right to reimbursement in the amount of stamp duty, levied on the plaint or petition of appeal. It may be added in support of the above distinction, that though the document designated a razeenamah may be executed by one party, it should imply some act of concession or consent on the part of his adversary, and cannot in the absence of such act of concession, or mutual agreement, be deemed a bona fide instrument of the kind denoted. By a "soolunamah" and "ruffanamah," also the Court understand an instrument requiring and bearing the acknowledgment and verification of both parties to the suit, which would ordinarily entitle the plaintiff or appellant to a refund of the stamp duty.—*Ibid.* *par.* 3.

The stamp duty to be refunded only when there has been an amicable settlement of the dispute, by the mutual consent of both parties

646. The Court desire by the foregoing observations to intimate, that a written application under whatever denomination, notifying an "adjustment" of the point in dispute, that is to say, an amicable settlement thereof by the mutual consent of both parties, provided such document bear the acknowledgment and verification of both parties to the suit, is sufficient to entitle the party, presenting it, to the benefits of Article 10, Schedule B, Regulation 10 of 1829—*Ibid.* *par.* 4.

Reference to Construction 977, on the bearing of the word "dustburdaree"

647. The authorities, who may presume that this point has been already ruled by Construction 977, will be pleased to observe, that the term "dustburdaree" occurring therein signifies a verbal relinquishment of the claim and not any written instrument of the nature of a "bazdaweh."—*Ibid.* *par.* 5.

The stamp duty refunded on a razeenamah, is not to be paid to the vakeel or mooktar without special authority, but will remain in deposit.

648. The treasurer should be prohibited from paying money under the above circumstances (viz. the value of the stamp duty refunded on the adjustment of a suit by razeenamah,) to any vakeel or mooktar, unless he shall be authorized to receive it by a special clause in his vakalatnamah or mooktarnamah; and when no such authority is produced, the money should remain in deposit, until the party entitled to receive it shall apply to the court for an order for payment, and such order be obtained.—*Civ. Ord. Cat. and West. C.* 3d Jan. 1834.

Discontinuance of the practice of sending to the superin-

649. His Honour the Deputy Governor of Bengal is pleased to sanction the discontinuance of the existing practice of forwarding to the office of the Superintendent of Stamps, for

examination, petitions of plaint filed in suits adjusted by razeenamah previous to making the refund of the stamp duty levied upon those documents.—*Cir. Ord. Cal. and West. C. 2d Aug. 1839.*

tendant of stamps for examination documents on which the stamp duty is to be refunded, on filing a razeenamah.

650. Paragraph 3 of the Circular of the Sudder dewanny adawlut, No. 60, dated 6th December last, appearing calculated to induce the inference that the Civil courts are not to forward to the Collector the stamped paper on which the petition of plaint is written in cases adjusted by razeenamah, unless expressly called for by that officer, I am directed to inform you that it was not meant thereby to alter or disturb the practice of transmitting to the Collector's office the original petitions of plaint on all occasions of a refund being ordered, which is in force under existing Circular orders, and to request, therefore, that you will consider the final paragraph of the Circular, No. 60, above referred to, as cancelled.—*Cir. Ord. 29th May 1840.*

But the stamped paper on which the petition of plaint is written, is to be sent to the collector in cases adjusted by razeenamah.

651. If a suit be decided in favour of the plaintiff, on the acknowledgment of the defendant without an investigation of the merits the vakeels will be entitled to the full fee; but if it be dismissed on razeenamah, no formal judgment being passed, the vakeels will be entitled to quarter or half the full fee, according as the razeenamah may have been filed before or after the filing of the pleadings.—*Con. 209, 1st June 1815.*

The vakeels, entitled to  $\frac{1}{4}$  or  $\frac{1}{2}$  the full fee, as the razeenamah may be filed before, or after, the pleadings.

652. The Court of Sudder dewanny adawlut have had before them your officiating Judge's letter, dated the 24th ultimo, requesting to be informed, whether it is competent to the courts to order the whole fees to be paid to the vakeels in cases adjusted by razeenamah after evidence has been taken: or whether the rule in Section 31, Regulation 27, 1814, for giving one-half the established fee in cases so settled, after the requisite pleadings shall have been filed, is applicable after evidence has been taken.—In reply I am desired to communicate to you for the information and guidance of your officiating Judge, that in cases adjusted by razeenamah after evidence has been completed, the vakeels are entitled to their whole fees, in like manner as if no razeenamah had been admitted.—*Con. 118, 5th May 1826.*

In cases adjusted by razeenamah after the completion of the evidence, the vakeel will receive the full fee.

653. The evidence of a single witness supported by circumstantial evidence is sufficient to prove a compromise.—*S. D. A. Sel. Rep. 7th April 1831, vol. 5, p. 107.*

A compromise may be proved by a single witness supported by circumstantial evidence.

654. A petition by the plaintiff withdrawing his claim having been rejected by the zillah Judge, held by the Sudder dewanny adawlut that, as such withdrawal could not affect the right of other parties, it ought not to have been rejected.—*S. D. A. Sel. Rep. 11th Sept. 1837, vol. 6, p. 181.*

Petition of a plaintiff withdrawing his claim ought not to be rejected.

655. In a case in which a razeenamah and solunamah were executed by both parties, a decision in conformity therewith, although in reversal of the judgment of the lower court, was passed by a single Judge of the Sudder dewanny adawlut.—*S. D. A. Sel. Rep. 19th April 1845, vol. 7, p. 202.*

Where a razeenamah and solunamah were filed by both parties, the S. D. A. decided accordingly, reversing the judgment of lower court.

656. The Sudder dewanny adawlut refused to carry into execution a razeenamah or deed of adjustment and compromise between the parties, no final decree having been passed, and the value of the stamp for the petition of appeal having been returned.—*Rep. Sum. Cases, 16th Nov. 1840, and 16th June 1841, p. 49.*

S. D. A. refused to carry a razeenamah into execution, no final decree having been passed, and the stamp duty having been refunded.

657. A suit for property, real and personal, in right of inheritance, having been adjusted between the parties, held that such adjustment does not bar an action by the same plaintiff

An adjustment does not bar an action by the same plff. against

the same dfts., for property fraudulently concealed at the time of the adjustment

against the same defendants for his share of certain ancestral property alleged to have been fraudulently concealed by the latter, at the time of the adjustment.—*S. D. A. Sel. Rep.* 14th Sept. 1843, vol. 7, p. 131.

Charge that a *razenamah* had been executed by force, dismissed for want of evidence.

658. After a *razenamah* had been filed, the plaintiff pleaded that execution had been forced, but though repeatedly desired to prove his assertion failed to do so. The civil court dismissed the suit, and the *Sudder dewanny adawlut* confirmed the decision.—*S. D. A. Sel. Rep.* 2d July 1825, vol. 4, p. 80.

A compromise set aside, one party not having performed the condition of it.

659. A compromise, entered into between the parties while the suit was pending, set aside, in consequence of one of them not having performed the condition of it.—*S. D. A. Sel. Rep.* 5th June 1807, vol. 1, p. 188.

Where one party does not comply with the terms of a compromise, the other is not bound by it

660. If one party do not comply with the conditions of a compromise, the other party is not bound by it.—*Ibid.*

A written engagement, which became the ground of withdrawing the suit, upheld by the *S. D. A.*, though the condition was yet unperformed

661. A written engagement of the defendant to the plaintiff (his uncle,) which had been the ground of the plaintiff's withdrawing a law suit against the defendant, and which contained an allotment of *dewutter* lands, to the plaintiff, on an implied condition, viz. the partition of a joint property within a stated period, upheld by the *Sudder dewanny adawlut*, on the circumstances of the case, though the condition was as yet unperformed, and judgment passed, providing, that the plaintiff might obtain the lands, on a partition being carried into effect.—*S. D. A. Sel. Rep.* 18th Dec. 1807, vol. 1, p. 222

A deed of compromise not to be annulled on a charge of fraud and intimidation unless clearly proved, nor on a plea of ignorance of facts

662. Two parties execute a deed of compromise [*soolunamah*]. One of them afterwards pleads, that fraud and intimidation had been resorted to. Such plea, unless clearly substantiated, cannot, neither can a plea of ignorance of existing facts, excuse the party engaging.—*S. D. A. Sel. Rep.* 27th July 1812, vol. 2, p. 23.

A compromise was settled on the promise of a consideration, which was not inserted in the release. On proof of the fact, the compromise enforced and the consideration awarded

663. Pending a suit of *A. versus B.*, terms of a compromise were settled between the parties, by which they mutually released each other, and *B.* agreed to pay a consideration. No clause to this effect was inserted in the release, signed by *A.* and lodged with *C.*, but on proof of the fact by *C.*, the compromise is enforced, and the consideration awarded to *A.*, costs being made payable in equal shares.—*S. D. A. Sel. Rep.* 7th April 1831, vol. 5, p. 107.

Case in which the heirs of a party to a compromise were not allowed to annul it

664. *A.* sued *B.* for possession of an estate held jointly : and *B.* in answer asserted right to the whole. *A.*'s suit is withdrawn on a compromise, by the terms of which *A.* assures to *B.* reversion of the moiety held by him, and generally his entire estate, real and personal. In a subsequent action, brought against *B.*, by the heirs of *A.*, held that the claim as to the moiety of the estate specified, is repelled by the compromise.—*S. D. A. Sel. Rep.* 19th Sept. 1831, vol. 5, p. 143.

A deed of compromise must be construed liberally, and its principle enforced

665. A deed of compromise should be construed liberally : so that, where an item of property was left out of a contemporary schedule of properties partible among the litigants, the plaintiff shall have the benefit of the principle of the compromise.—*S. D. A. Sel. Rep.* 17th Jan. 1832, vol. 5, p. 159

A composition not fulfilled by one party cannot be admitted in his favor.

666. A composition, the terms of which have not been fulfilled by one of the parties, cannot be admitted in his favor as proof of the amount of the claim of another party.—*S. D. A. Sel. Rep.* 27th April 1837, vol. 6, p. 160.

## SECTION XXXVII.

*Decisions of the Sudder Court regarding Fines.*

667. Respondent fined 100 rupees by the Sudder dewanny adawlut for misstating facts to the court, respecting a decree of the Provincial court, affecting the property in dispute, with a view to obtain an order for the enforcement of a decree of the Sudder dewanny adawlut, which the Provincial court had delayed till further instructions.—*S. D. A. Sel. Rep. 7th Sept. 1802, vol. 1, p. 59.*

Case in which a respondent was fined 100 rs. for misstating facts.

668. Respondents fined 200 rupees each and their *mooktar* 50 rupees, for endeavoring to impose on the Sudder dewanny adawlut a false copy of a record.—*S. D. A. Sel. Rep. 27th Sept. 1804, vol. 1, p. 85.*

Respondents and their mooktars fined for endeavoring to impose on the S. D. A.

669. The zillah Judge, decreeing summarily to a farmer possession of lands which the under-tenants, though in balance, refused to give up, fined them 100 rupees to Government for having retained possession by force; the Court held that the fine was not authorized by the Regulations and remitted it.—*S. D. A. Sel. Rep. 3d Aug. 1807, vol. 1, p. 206.*

Fine imposed by the judge on under-tenants for retaining lands by force, remitted by the S. D. A.

670. In a suit by certain landholders against a *tehsildar*, for undue exactions, a fine of three times the amount exacted was decreed to Government against the *tehsildar*, in addition to the refund to the landholders.—*S. D. A. Sel. Rep. 19th Feb. 1808, vol. 1, p. 229.*

A *tehsildar* fined three times the amount he had exacted.

671. In a suit for money and property embezzled, the Provincial court adjudged the payment of one-third of the amount claimed to be made by one of the defendants as a fine for his connivance. But on an appeal preferred by him, the Sudder dewanny adawlut reversed this order, as unwarranted by the Regulations and inconsistent with the practice of the Civil courts.—*S. D. A. Sel. Rep. 13th Nov. 1827, vol. 4, p. 263.*

A defendant fined for conniving at embezzlement, and the fine remitted on appeal by the S. D. A.

672. The rules contained in Section 6, Regulation 1, 1793, for the award of fines, cannot be considered applicable to the case of a person whose attendance may be required as a witness, upon whom a summons has not been served.—*S. D. A. Sel. Rep. 7th Dec. 1827, vol. 1, p. 287.*

A witness on whom a summons has not been served, cannot be fined.

673. A zillah Judge having fined a defendant 100 rupees for the temerity of his defence, the Court considered the order unjust and contrary to practice.—*S. D. A. Sel. Rep. 15th April 1833, vol. 5, p. 292.*

Fine imposed on a defendant for the temerity of his defence remitted.

## SECTION XXXVIII.

*Zillah and City Courts—Costs.*

674. The Court observe that it has not hitherto been the practice of this (the Western) Court, nor, so far as they are informed, of the Calcutta Court, to award costs in miscellaneous cases. Upon general principles of equity and justice, however, the Court can see no good reason why a party in a miscellaneous case should not be reimbursed, by the opposite party, any reasonable costs to which he may be subjected in prosecuting or defending a just claim, in the like

The civil courts are competent to award costs in miscellaneous cases.

manner as in a regular suit; and they are, therefore, of opinion, there being nothing prohibitory that they are aware of in the Regulations, that the same rules which govern the award of costs in the one case, should equally extend to the other.—*Con. 1155, West. C. 22d June, Cal. C. 13th July 1838.*

Case in which appellant was not allowed costs, though judgment passed in his favor.

675. The appellant, having denied that the respondent was a son, or heir of his father, was not allowed his costs, though judgment was passed in his favour; the costs in all the courts were made payable by the parties respectively.—*S. D. A. Sel. Rep. 20th July 1801, vol. 1. p. 4b.*

Order for costs of suit to be paid by the winner, reversed.

676. Order for costs of suit to be paid by the successful party, reversed.—*S. D. A. Sel. Rep. 2d Aug 1820, vol. 3, p. 44.*

Case in which the amount of costs due on a first decree were considered so far a set-off against the amount due on the second.

677. A plaintiff having been nonsuited in an action for debt, and made chargeable with costs, sues again and obtains a decree. In the meanwhile the defendant sells the decree in the nonsuit, to a third party. Held that the sale, being evidently collusive, is no bar to the amount of costs due on the first decree being considered so far a set-off against the amount due on the second decree.—*Rep. Sum. Cases, 27th Oct. 1846, p. 86.*

The civil court cannot order execution for costs not mentioned in the decretal order, unless the decree is corrected.

678. Where costs have not been awarded in the decretal order, the Civil court cannot order execution for costs without first correcting the decree on the application of the decree-holder.—*Rep. Sum. Cases, 5th July 1817.*

Costs allowed to a party unnecessarily made a defendant in a case subsequently compromised.

679. Costs were allowed to a party unnecessarily made a defendant in a case, subsequently compromised between the plaintiff and the other defendants.—*Rep. Reg. Cases, 27th April 1817.*

Institution of a suit for a debt before the period of payment has arrived, sufficient for a refusal of costs.

680. Held, that the institution of a suit for the recovery of a debt before the period specified for payment, is not a sufficient ground for depriving the creditor of interest after the debt has become due; though sufficient for refusal of costs or for nonsuit.—*S. D. A. Sel. Rep. 12th Feb 1821, vol. 3, p. 68.*

Case in which S. D. A. made the losing party pay costs only on the sum originally sued for.

681. The plaintiff suing to recover a sum of money taken from him under an award, the zillah Judge decreed the sum claimed, and damages and costs under Section 6, Regulation 28-1803, which plaintiff had not sued for. This part of the decree was reversed, and costs made payable by the losing party only on the sum originally sued for.—*S. D. A. Sel. Rep. 12th Dec. 1827, vol. 1, p. 293.*

Costs are to be paid in a suit for damages, not on the sum sued for, but the sum awarded.

682. A., an officer of Police, illegally though for a short time arrested B., and offered to strike him. On B's suit for damages, laid at 10,000 rupees,—the Provincial court awarded 100 rupees damages and costs on the sum sued [amounting to 637 rupees.] The Sudder dewanny adawlut decreed that the defendant should only pay costs in proportion to the damages awarded.—*S. D. A. Sel. Rep. 27th Aug. 1832, vol. 5, p. 229.*

Attorney's costs incurred by a creditor, in a demand on a mofussil resident who was not amenable to the supreme court, are not recoverable in the mofussil courts.

683. Held by the Sudder dewanny adawlut that attorney's costs incurred by a creditor for making a demand on a resident in the mofussil, who was not amenable to the jurisdiction of the Supreme Court, is not recoverable by action in the mofussil courts.—*S. D. A. Sel. Rep. 30th June 1836, vol. 6, p. 73.*

## SECTION XXXIX.

*Zillah and City Courts—Damages.*

684. A decree for damages against A., who alleged himself to be the guardian of B. and C, held by the Sudder dewanny adawlut to be personal, and not to confer on A. any exemption from liability, nor subject the estate of B. and C. to be sold in execution thereof.—*Rep. Sum. Cases*, 29th Jan. 1839, p. 16.

A decree for damages against one who alleged himself to be the guardian of others held to be personal.

685. A. sued to recover a given sum as profits of a defined quantity of land. The decree of a lower court, awarding a less sum arbitrarily taken as damages, affirmed in the Sudder dewanny adawlut.—*S. D. A. Sel. Rep.* 30th Aug. 1832, vol. 5, p. 231.

Decree of a lower court awarding a sum less than that sued for, arbitrarily taken as damages, affirmed.

686. The plaintiff agreed to receive a fixed sum from the defendant as damages for an assault and false imprisonment, which sum the defendant failed to pay; the plaintiff sued for damages in excess of the amount agreed between the parties. The Sudder dewanny adawlut under the circumstances gave judgment for the plaintiff for the amount he had originally consented to receive, together with all costs of suit.—*S. D. A. Sel. Rep.* 31st Dec. 1839, vol. 6, p. 275.

Case of damages for an assault & false imprisonment.

687. Damages were awarded against a Police darogah for the illegal search of the plaintiff's house in a case of theft.—*S. D. A. Sel. Rep.* 20th Aug. 1835, vol. 6, p. 39.

Damages awarded against a police darogah.

## SECTION XL.

*General Rules regarding the Control of the Zillah Judges over the Uncovenanted Judges, and the transfer of business to Principal Sudder Ameens.*

688. All original suits instituted before the Judge to be at once transferred to the proper tribunals for decision.—*Civ. Ord.* 15th Jan. 1841, par. 1.

All original suits instituted before the judge to be transferred to the uncov. J.

689. All appeals from the uncovenanted Judges to be heard and revised as soon as practicable after the prescribed forms can be observed.—*Ibid*, par. 2.

Appeals from the uncov. judges to be heard and revised speedily.

690. The zillah Judges will obtain, under circular order, No. 65, 19th October, 1832, the sanction of the Court of Sudder dewanny adawlut to the transfer of a proportion of the appeals from the decisions of the Moonsiffs and Sudder Ameens, to the Principal Sudder Ameen for decision, agreeably to Section 16, Regulation 5, 1831. These applications to be submitted whenever the number of suits pending before the Principal Sudder Ameen may be less than 200.—*Ibid*, par. 3.

Transfer of a proportion of the appeals from M. and S. A. to the P. S. A.

691. They will carefully superintend the state of the civil business before the uncovenanted Judges, and ascertain that the suits are brought to an early decision, and not allowed to lie over beyond six or eight months without special reasons.—*Ibid*, par. 4.

Zillah judges to superintend carefully the state of civil business before the uncov. judges.

692. They will transfer, agreeably to Section 8, Act XXV. 1837, (for which authority is hereby granted) to the Principal Sudder Ameen, for disposal, all miscellaneous cases instituted and pending under headings Nos. 5, 6, 7, 8, 10, 11 and 12, together with any other miscellaneous matters legally transferable under the Regulations, to that officer.—*Ibid*, par. 5.

Certain miscellaneous cases to be transferred to the P. S. A.



Zillah judges will check irregular pleadings, and enforce the duty on the uncov. judges, and the proper preparation of their decrees.

693. They will check all irregular pleadings, and ascertain that the uncovenanted Judges pay due attention to this important subject, as well as to the proper preparation of their own decrees.—*Ibid*, par. 6.

Care to be observed in the admission of special appeals and reviews of judgment.

694. They will strictly abide by the provisions of the Regulations and the instructions of the Court, in the admission of special appeals and reviews of judgment.—*Ibid*, par. 7.

Zillah judges will bring to the notice of S. D. A., the gross neglect and incapacity, as well as the zeal and diligence of uncov. judges.

695. They will bring to the immediate notice of the Court, in the prescribed manner, all instances of gross neglect or incapacity on the part of the uncovenanted Judges, and in like manner take every proper opportunity of bringing forward the claims of those officers, who, from their zeal, diligence, and attention, are deserving of promotion to a higher grade.—*Ibid*, par. 9.

Notice to be taken of any delay in the disposal of suits by the uncov. judges.

696. The Court are pleased to direct the general adoption of the plan pursued in some districts of noting in the quarterly statements, "explanation of part 3 of the civil statement No. 1, regarding the cause of delay in the disposal of suits pending beyond one year,"\* whether the explanations of the uncovenanted Judges are satisfactory or the contrary. Similar notes are to be made in the half-yearly statements of explanations regarding the miscellaneous business.—*Cir. Ord.* 25th Nov. 1842.

Farther instructions regarding the reference of miscellaneous business to the P S A

697. In modification of former orders† regarding the descriptions of miscellaneous business referrible to Principal Sudder Ameens, under Section 8, Act XXV. 1837, the Court authorize the transfer to those officers, at the discretion of the Judges of the undermentioned miscellaneous cases. No. 13, Petitions from paupers on the point of pauperism, under Section 5, Regulation 28, 1811. No. 14, Petitions from insolvents under Section 11, Regulation 2, 1806. No. 15, Petitions for the redemption and foreclosing of mortgages under Section 2, Regulation 1, 1798, and Section 8, Regulation 17, 1806. No. 16, Applications for the execution of decrees, under Section 15, Regulation 26, 1811. No. 17, Petitions from parties praying for reversal of sales, or objecting to orders passed on the execution of decrees, under Clauses 3, 4 and 6, Section 3; Clauses 4 and 5, Section 4; and Clause 1, Section 5, Regulation 7, 1825, and petitions of every other nature connected with the execution of decrees. No. 18, Cases of resistance of process whether in execution of decrees or otherwise. No. 19, Applications for the execution of awards of arbitrators, under Clause 2, Section 3, Regulation 6, 1813.—*Cir. Ord.* 5th Dec. 1845, par. 1.

The revised form of statement No 2 to be brought into use

698. The Court at the same time direct the use of the revised form of statement No. 2, from the first January next. The alterations made in this statement are such as have been called for by the abrogation of former laws and by the enactment of others for extending the jurisdiction of the Native Judges. The mention of the laws relating to each class of cases will obviate doubts as to the heading under which any given order is to be entered; while the asterisks inserted in the columns for the Principal Sudder Ameens, opposite to headings other than those specified in paragraph 1, will prevent the transfer through inadvertence of any other cases than those above indicated as referrible.—*Ibid*, par. 2.

\* Circular order, No. 131, 15th January, 1841

† Circular order for *Lower Provinces*, No. 133, 15th January, 1841, Rule 5.

Circular order for *Western Provinces*, No. 143, 10th April, 1841. No. 1216, 5th July, 1845.

## SECTION XLI.

*Trial of Suits by Moonsiffs—General and Miscellaneous Rules.*

699. Moonsiffs are themselves to investigate the suits cognizable by them in a public cutcherry, or court-room, and are not to allow their officers, servants, or dependants, or any other person to interfere therein. In receiving, trying and determining suits, they shall be guided by the rules prescribed in the following sections, and in points not expressly provided for in this Regulation, they shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah and City courts in the trial and decision of civil suits.—*Reg. 23, 1814, Sect. 14.*

Suits to be tried by the moonsiffs themselves in a public cutcherry, and under what rules.

700. Moonsiffs are directed to act in strict conformity with Circular order, 13th September, 1843, Nos. 372, 373, 374 and 375, page 287.

M. will act in strict conformity with C. O. 13th Sept. 1843.

701. Moonsiffs will also take for their guidance the rules contained in Circular order, 18th January, 1844, Nos. 171 and 172, page 246.

M. will be guided by C. O. 18th Jan. 1844.

702. The Moonsiffs shall try all suits depending before them, in the order in which they have been filed or numbered, provided however, that the zillah or city Judge be at all times authorized either upon a report from the Moonsiff, or upon other grounds of information to direct the Moonsiff to bring any particular suit or suits to a hearing and determination without attending to the regular order of the file.—*Reg. 23, 1814, Sect. 26.*

Suits to be tried according to their order on the file.

Proviso.

703. The rules prescribed in the existing Regulations in regard to the period within which suits may be admitted in the Zillah and City courts, as well as in regard to the mode of computing the value of the property in litigation, shall be held applicable to suits preferred to the Moonsiff.—*Reg. 5, 1831, Sect. 5, Cl. 6.*

Rule for computing the period within which suits are cognizable, and the value of the property in litigation in the moonsiff's court.

704. In a suit cognizable by a Moonsiff, the origin of the cause of action must be reckoned from the time when money became payable, not from the date of the bond. A simple acknowledgment of the truth of the demand will not be sufficient to constitute a new cause of action, so as to bring within the cognizance of the Moonsiff a suit, the prescribed period for instituting which had elapsed.—*Con. 196, 1st March 1815.*

Period from which the cause of action must be reckoned, in a suit before a M.

705. All suits within the competency of a Moonsiff to decide under the foregoing provisions, shall ordinarily be instituted in the Moonsiffs' courts. Provided nevertheless, that it shall be competent to a zillah or city Judge to receive such suits, and to try them himself, or to refer them for trial to any other court subordinate to his authority, whenever he may see sufficient reason for so doing.—*Reg. 5, 1831, Sect. 7.*

Suits within the competency of the moonsiffs to be ordinarily instituted in their court's proviso.

706. It having been determined that the Moonsiffs appointed under Regulation 5, 1831, shall be required to give an explanation, on their failing to decide on their merits twenty-five suits per mensem, and the Sudder Ameens and Principal Sudder Ameens, when they do not decide on their merits twenty suits, (except in the case of Principal Sudder Ameens having appeals pending before them, who will be required to furnish an explanation when they do not decide on their merits twenty-five suits per mensem,) I am directed to request that you will con-

Number of suits which a M. is expected to decide monthly. An explanation to be given when the number falls short

sider the rule laid down in the third clause of paragraph 11 of the letter from the Secretary to Government in the Judicial department, dated the 28th February, 1817, circulated for general information on the 12th March of the same year,\* applicable, with the above limitation, to the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs of your district — *Cir. Ord. Cal. and West. C. 21st Sept. 1832, par. 1.*

The common excuses made for not deciding the request-number will not be admitted, unless the Judge considers them satisfactory.

707. You will be pleased to communicate this information to these officers, and inform them that the Court cannot in future admit as valid the common excuses of, "the unforward state of their files," "the failure of parties to attend and to file their proofs," "the non-attendance of witnesses," &c. unless the Judge shall distinctly certify that he considers the reasons assigned to be sufficient.—*Ibid, par. 2.*

M are required to pay strict attention to reg 4, 1793, sec 5, 6 & 10; reg 23, 1814, sec 19, 21, 22 and 27, and reg 26, 1814, sec 12

708. The Court are inclined to believe that the neglect of the parties may, in some measure, be attributable to the want of method on the part of the courts themselves in the preparation of the suits on their files. They therefore request that you will impress on the Native Judges in your district the necessity of paying strict attention to the rules laid down in the Regulations, particularly in Sections 5, 6, and 10, Regulation 4, 1793; Sections 19, 21, 22 and 27. Regulation 23, 1814, and Section 12, Regulation 26 of 1814, for their guidance in this branch of their duty. It is probable that when the parties see that their cases will be taken up regularly when they do attend, and that they will be liable to have them dismissed on default, or tried in their absence, on their failing to do so, a more regular system will be introduced into the practice of the courts, which will render the administration of civil justice more speedy and efficient.—*Ibid, par. 3.*

M may call for the record of a case from any court through the Judge of the district

709. Held on a reference from the Judge of Mymensing, that a Moonsiff has the power to call for the record of a case from any court, (such call being made through the Judge of the district to which he is attached,) whenever any peculiar circumstances may render it necessary for him to do so, but that in general if any particular paper is required, the party who wishes to file it should obtain an attested copy in the usual manner. — *Con. 1259, Cal. C. 1st Nov, West. C. 6th Dec. 1839.*

A ryot sued for rent in the court of a M. cannot remove it to the court of the collector by affirming that the land is rent-free

710. With reference to the second paragraph of your letter of the 20th March last, and to your letter of the 2d instant, I am directed to observe that the question for consideration appears to be, whether a ryot sued for rent in a Moonsiff's court can remove the suit to the Collector's court, merely by affirming that the land for which the rent is demanded is not liable to rent. The Court are of opinion that he cannot. The point at issue is, not the validity of the alleged rent-free tenure, but the fact of the ryot's having paid or not rent for the year previous to that for which the suit is instituted. The Moonsiff is competent to try and determine this point, and if it be proved by the village accounts duly authenticated, or other legal evidence, that the ryot did pay rent for the preceding year, to pass a decree for such amount of rent as may appear to be due, leaving the ryot to establish his right to hold the land as lakhiraj by a suit instituted under Section 30, Regulation 2, 1819.—*Con. 696, Cal. C. 25th May, West. C. 6th July 1832.*

\* That the Sudder Ameens in submitting the prescribed monthly reports of causes decided by them, be required to explain the reason of more causes not having been determined, whenever the monthly number of causes decided by them on trial, exclusively of nonsuits on default, and adjustments by *razeenamahs*, may be less than thirty; and that the zillah and city Judges record on such report, whether the reasons assigned are, in their judgment, sufficient and satisfactory, or otherwise.—*Cir. Ord 12th March 1817, par. 11.*

711. *Mooktarnamahs* in the Moonsiffs' courts are not subject to any stamp duty.—*Con.* 416, 14th April 1826.

*Mooktarnamahs* in M.'s courts not subject to stamp duty.

712. Section 10 [which requires a record of the points at issue] and Section 12 [which requires the issue of an eight days' notice before the hearing of a suit] of Regulation 26, 1814, are not applicable to Moonsiffs.—*Con.* 1226, *West. C.* 21st June, *Cal. C.* 2d Aug. 1839.

M. need not record the points at issue, or give eight days' notice before hearing the suit

713. *Moonsiffs* may depute *ameens* to make local investigations on regular suits pending before themselves. But they cannot depute a person to make such investigation as they themselves have been directed to make by other courts. If the *Moonsiff* cannot leave his station to make such investigations without materially interfering with his special duties, he should represent the circumstance to the Judge, who may depute another person to perform the duty.—*Con.* 863, 14th Feb. 1834.

M may depute an ameen to make a local investigation, but not as that which he himself has been directed to make by other courts.

714. With regard to the eleven suits in which a decision has been already passed, the Court deem it desirable that every means should be tried of ascertaining the nature of the judgment already passed, previous to the adoption of any further measures which would be attended with much inconvenience; you will be pleased therefore to make strict enquiry among the parties and their vakeels, the *Moonsiff* himself and the books of his office, for a copy or notes containing the substance of the decree. If such should be obtainable the *Moonsiff* would be enabled from them to draw up another decree. It would also be advisable, where such documents are not to be found, that the parties and vakeels be questioned as to the nature of the decree passed, and if they agree on this point, the *Moonsiff* may draw up his decree from their statement. If after every method has been tried some cases should still remain, regarding the judgment in which no information can be obtained or any doubt may remain, you will be pleased to report specially to this Court regarding them; stating fully the measures which you have adopted ineffectually with the view to discover the contents of the decree.—*Con.* 896, *West. C.* 5th Sept., *Cal. C.* 3d Oct. 1834.

Mode of procedure when the records of a M.'s court have been destroyed by fire.

715. The Sudder dewanny adawlut directed the restoration to the file of a *Moonsiff*, of a suit for false imprisonment against a Police darogah, struck off by the orders of the Judge.—*Rep. Sum Cases*, 8th Jan. 1844, p. 55.

Case in which the S D A. ordered a suit to be restored to the file of the M.

## SECTION XLII

### *Trial of Suits by Moonsiffs—Plaints*

716. In suits instituted before the *Moonsiffs* under the foregoing rules, the plaint shall be written upon stamped paper agreeably to the rates specified in the Schedule B, referred to in Section 17, Regulation 10, 1829.—*Reg.* 5, 1831, *Sect.* 8, *Cl.* 2.

Value of the stamped paper on which the plaints shall be written

717. To remove doubts which are believed to exist, I am desired by the Court to intimate to you, with the sanction of the Government, that in cases in which more than one stamp is required for engrossing petitions of plaint or appeal, or petitions presented by persons desirous of appealing as paupers under the provisions of Clause 1, Section 12, Regulation 28, 1814, it is optional to parties to file several stamps, the aggregate value of which will be equal to the amount prescribed by law, or one stamp of the full value, with as much plain paper attached thereto as may be required.—*Cir. Ord.* 28th Aug. 1840.

Where more than one stamp is required for petitions of plaint, the party may file several stamps equal to the legal amount, or one stamp of full amount and the rest blank paper

What matters are required to be stated in the plaint.

718. The plaint shall state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total sum of money or amount of personal property claimed, and all material circumstances, which may elucidate the transaction, and may tend to bring the matter in dispute to a distinct issue.—*Reg. 23. 1814, Sect. 17.*

The insertion of irrelevant matter and terms of abuse in the plaint to be restrained and discouraged.

Plant to be signed, numbered, and dated.

And to be inserted according to a prescribed form in a book to be kept for that purpose.

719. It shall be the duty of the Mooniff to restrain and discourage as much as possible the insertion in the plaint of irrelevant matter and of terms of abuse and reproach against the character of the defendants or others. The plaint shall be signed and numbered, and dated in the order in which it may be received by the Moonsiff, and the number of the suit, the names of the parties, the date on which the petition is received, the amount claimed, and the subject matter of the suit, shall be carefully entered in a book, to be kept by the Moonsiff according to the form No. 4, of the Appendix; two blank columns shall be left in the book, in the first of which shall be inserted the date of the decision and an abstract of the final order passed in each suit, shewing whether the claim be decreed in whole or in part, or nonsuited, or adjdged by razeenamath or dismissed on investigation of the merits, or otherwise disposed of, and the amount of the costs adjdged against either or both of the parties. In the second blank column shall be inserted the date on which the copies of the decrees may be furnished or tendered to the parties. With a view to ascertain that the register books are regularly kept in the manner above prescribed, and that depending suits are brought to a hearing according to their order on the file, the zillah and city Judges are respectively required to inspect them once at least in each year, and for this purpose shall require the several Moonsiffs to transmit them to the court either during the period of the Dusserah or Mohurram vacation as may be most convenient.—*Ibid. Sect. 18.*

Case in which M may receive an amended plea, which is not considered a supplemental plaint.

720. A. suing B for possession of real property in virtue of a deed of sale in the Moonsiff's court, the rights and interests of B. in the property are sold by the Collector in satisfaction of a decree to C *after* the institution but *before* the decision of the suit. Held, that it is competent to the Moonsiff to receive an amended plea, including C. among the defendants, such amended plea not being considered a supplemental plaint which a Moonsiff is not competent to receive.—*Con. 1308, West. C. 28th Aug., Cal C 17th Sept 1841.*

Further explanation on the subject of supplemental plaints.

721. With reference to Construction No. 1308, which declares that Moonsiffs are incompetent to receive supplementary plaints or answers, the Court promulgate, for general information, that the restriction does not extend to petitions designed to rectify evident errors in plants or answers. According to Section 5, Regulation 4, 1793, (corresponding with Section 5, Regulation 3, 1803,) the supplemental plaint or answer is intended to supply "any thing material to the suit," which "from mistake, inadvertence, or other cause," the plaintiff or defendant "shall have omitted to insert" in the plant or answer. But an omission to insert is different from an evident mistake in regard to that which has been inserted. For instance, if a plaintiff had omitted to sue for the interest as well as the principal of a debt, he could not be allowed, in the Moonsiff's court, to supply the omission, but having sued for both principal and interest, he ought to be allowed to correct an evident error of calculation.—*Cir. Ord. 3d June 1847.*

722 The direction of a Principal Sudder Ameen to a Moonsiff to receive a supplemental plaint was declared to be illegal.—*Rep. Reg. Cases, 27th May 1847.*

A P. S. A. cannot direct a M. to receive a supplementary plaint.

### SECTION XLIII.

#### *Trial of Suits by Moonsiffs—Notice—Proclamation.*

723. When the complaint shall have been thus received and entered in the book according to the prescribed form, the Moonsiff shall cause to be served on the defendant a written notice under his seal and signature, containing only the number of the suit, the names of the parties, and a short statement of the demand, and requiring the defendant to attend in person or by vakeel and to deliver an answer to the plaint on or before a certain day, which must be specified in the notice.—*Reg. 23, 1814 Sect. 19, Cl. 1.*

What notice to be served on the defendant

724. The Moonsiff shall deliver the notice to the plaintiff or to his vakeel, and the plaintiff may either himself serve the notice on the defendant, or through any other person whom he may choose to employ for that purpose. Provided however, that the name of the person intended to be employed in this duty be in all cases endorsed on the notice by the Moonsiff previously to its being delivered to the plaintiff or his vakeel for execution.—*Ibid, Cl. 2.*

To whom the notice is to be delivered

[ *The rules regarding the service of processes from Moonsiffs' courts will be found at Chapter II, Section 11, at the 138th and subsequent rules* ]

725. The person through whom this notice may be served shall require from the defendant a written acknowledgment, to be endorsed on the back of the notice, signifying that it has been duly served upon him, and he shall further cause some of the defendant's neighbours, or any mamlul or putwarce or other principal inhabitant of the village, or the mohalladar of the ward, to witness the due execution of the service, and he shall at all times state in his report the name or names of such witness or witnesses.—*Reg. 23, 1814, Sect. 19, Cl. 3.*

And how it is to be served

726. When the defendant may be a weaver or a person employed in the provision of the Company's investment under the Commercial Residents, or in the provision of salt or opium in those departments, the notice above prescribed shall be enclosed within a sealed cover, addressed to the Resident or Agent, or to the assistant, or to the gomastah, ameen, or head officer of the nearest aarung, kotha, or chowkey, subordinate to them, and shall be superscribed with the official seal and signature of the Moonsiff. The Resident, or Agent, or his assistant, or head Native officer, shall cause the notice to be duly served and acknowledged by the defendant, and shall then return it to the Moonsiff.—*Ibid, Sect. 20.*

Notice how to be served on weavers & other persons employed in certain departments on account of government.

727. If a defendant who may have been served with a notice as directed in the two preceding sections shall not appear in person or by vakeel, within the time specified, or if having appeared, he shall refuse to answer the plaint, the Moonsiff shall proceed to try the cause *ex-parte*, and after examining the plaintiff's evidence in support of his claim,

Under certain circumstances the cause may be tried *ex-parte*.

shall give judgment in the same manner as if the defendant had appeared and answered to the plaint.—*Ibid*, Sect. 21, Cl. 1.

But mooniffs required to ascertain that the notice was duly served on the defendant

728. It shall however be the duty of the Mooniff previously to trying the case *ex-parte*, to make such enquiries from the person who served the process, and from the persons who witnessed such service, as may satisfy his mind, that the notice was duly served on the defendant.—*Ibid*, Cl. 2.

In cases tried *ex-parte*, evidence shall be taken in proof of the plaintiff's claim, as if the defendant had appeared and answered.

729. Instances having been brought to the notice of the Court, of *ex-parte* decrees having been passed for the rent of lands of which the decree-holder was not in possession, I am directed by the Court to request you will call the attention of the Principal Sudder Ameeris, Sudder Ameeris, and Mooniffs of your district, to the rule contained in Section 21, Regulation 23, 1814, which prescribes that evidence shall be taken in proof of the plaintiff's claim in cases tried *ex parte*, in like manner as if the defendant had appeared and answered the suit.—*Cir. Ord. Cal. and West. C. 24th Sept. 1832.*

The absence of the defendant or his refusal to acknowledge the service, how to be certified.

730. In cases in which a defendant to whom a notice may have been issued in conformity with the preceding sections may abscond or conceal himself, or cannot after diligent search be found, or shall refuse to give the required written acknowledgment, the person entrusted with the execution of the process shall certify the same on the back of the notice, and shall require some person or persons being neighbours of the defendant, or a mundul, or a putwarree, or other principal inhabitant of the village, or a mohulladar of the ward in which the defendant may usually reside, to certify on the back of the process, that after diligent search the defendant cannot be found, or that he has refused to give the required written acknowledgment. —*Reg. 23, 1814, Sect. 22, Cl. 1.*

Proclamation to be issued after it shall have been certified that the defendant cannot be found or has refused to acknowledge the service

What the proclamation shall contain

731. When a return to this effect is made, the Mooniff shall cause a proclamation, written in the current language and character of the country, to be affixed in a conspicuous part of his own cutcherry, and a copy of the same on the outer door of the defendant's usual place of residence, or some other conspicuous place near it. The proclamation shall contain a copy of the original notice, and shall state that if the defendant do not appear in person, or by a vakeel, within the period of fifteen days from the date of the proclamation, the suit will be brought to a hearing and determination, without the appearance or answer of the defendant.—*Ibid*, Cl. 2.

Other evidence than that of the serving peon is required to prove the issue of process to defendants in M.'s courts.

732. The provisions of Clause 2, Section 21, Regulation 23, 1814, which require the evidence of witnesses besides the person who served the process, have reference to the circumstance that the process of Mooniffs' courts was then served either by the plaintiff himself or any other person whom he chose to employ for that purpose: under the present system of issuing process through registered peons the same necessity does not however exist, and the evidence of the peon may be considered sufficient unless there are grounds to suspect his statement. Mr. Turnbull is of opinion that under the existing law the Mooniff is competent to exercise his discretion; but Mr. Colvin considers the provisions of Clause 2, above cited, to be imperative, and that the evidence of witnesses to the service of process of others than the peon serving it must be taken in every instance. The point is therefore referred for the decision of the Presidency Court. The Calcutta Court, on the 3d May, 1833, concurred in the opinion expressed by Mr. Colvin.—*Cm. 775, West. C. 4th April, Cal. C. 3d May 1833.*

733. If the defendant shall still not appear either in person or by vakeel, the Moonsiff, on the expiration of the period limited in the proclamation, shall proceed to try and determine the suit *ex-parte*, with the same precautions, and in the same manner, as is prescribed in Clause 2, Section 21 of this Regulation.—*Reg. 23, 1814, Sect. 22, Cl. 3.*

If the defendant shall fail to attend within the period limited in the proclamation, the suit is to be tried *ex-parte*.

734. When a defendant in a suit pending before one Moonsiff resides in the division of another, the Court are of opinion that it would be sufficient to have the process backed by the Moonsiff in whose division the defendant resides.—*Con. 701, Cal. C. 6th July, West. C. 17th Aug and 26th Oct 1832, par. 3.*

Course of procedure if the defendant resides in the division of another M

735. The principle which formerly regulated the correspondence of Moonsiffs with the covenanted officers of Government, having been superseded by the Circular order of the Sudder dewanny adawlut, No. 7, dated 15th April last, the Court are pleased to notify, for general information, that the second paragraph of Construction No. 1235, which, in pursuance of that principle imposed on the functionaries named the obligation of issuing their processes to be served in other districts, through the channel, and under the seal and signature of the Judge to whom they might be subordinate, has been rescinded.—*Cir. Ord 11th Aug. 1813.*

The process of the M to be served in other districts need not be sent under the seal and signature of the judge.

736. And it is hereby enacted, that such parts of Regulation 23, 1814, as prohibit the Sudder Ameens and Moonsiffs from requiring security from defendants: or from attaching their property in cases pending before them, or from realizing fines imposed by them without first obtaining the sanction of the zillah Judge, be repealed.—*Act 17, 1845, Sect. 3.*

Repeals parts of reg 23, 1814, prohibiting S A and M from requiring security, &c.

737. And it is hereby enacted, that it shall be competent to the Sudder Ameens and Moonsiffs to demand security from the defendant under the provisions of Sections 4 and 5, Regulation 2, 1806, in cases pending before them: and also to proceed, without reference to the zillah Judge, to the realization of fines imposed by them, provided that all orders passed by the Sudder Ameens and Moonsiffs under this section, be subject to an appeal to the zillah Judge.—*Ibid, Sect. 4.*

S A and M may demand security under sec 4 and 5, reg 2, 1806, and may proceed for realization of fines without reference to zillah J

738. The provisions contained in the existing Regulations relative to the trial and decision of suits already cognizable by the Moonsiffs, are hereby declared to be equally applicable to suits which may be instituted before those officers under this Regulation.—*Reg. 5, 1831, Sect. 8, Cl. 3.*

Suits to be tried & decided by moonsiffs under rules heretofore in force

739. Held on a reference from the Judge of Purneah, that the rule in Section 24, Regulation 12, 1817, which requires putwarees to produce their accounts when required by the Courts of justice, is applicable to the subordinate courts. Moonsiffs who may require to put the rule in force should send the putwaree with a proceeding to that effect to the zillah Judge.—*Con. 1346, Cal. C. 24th June, West. C. 2d Aug. 1810.*

M may require putwarees to produce their accounts, thro' the judge.

## SECTION XLIV.

### *Trial of Suits before Moonsiffs—Pleadings.*

740. Vakalutnamahs filed in cases before Moonsiffs should be received on plain paper.—*Con. 798, Cal. C. 14th June, West. C. 19th July 1833.*

Vakalutnamahs in M's courts will be on plain paper.



Defendant to file an answer to the plaint if he shall appear at any time before the plaintiff's evidence shall have been received.

741. When the defendant shall attend either in person or by vakeel, within the period limited in the notice or proclamation, or at any subsequent period, before the plaintiff's evidence or proofs shall have been received in the case, he shall be allowed to take a copy of the plaintiff's petition, and to file his answer to the complaint.—*Reg. 23, 1814, Sect. 24*

Moonsiffs to prevent the insertion in the answer of irrelevant matter and abusive terms.

742. It shall be the duty of the Moonsiffs to restrain and discourage as much as possible, the insertion in the answer of any matter evidently irrelevant to the suit, and of terms of abuse and reproach against the character of the parties or other persons. — *Ibid, Sect. 25, Cl. 1.*

In what cases the plaintiff may be permitted to file a reply.

743. If the answer of the defendant shall be a simple admission or denial of the matter contained in the plaint, no further pleading shall be necessary in suits before the Moonsiffs, but if the answer shall contain any plea or allegation, which may require a reply on the part of the plaintiff, in order to bring the matter in dispute to a distinct issue, or to which the plaintiff may be desirous of replying, such reply shall be filed on the next court day after that on which the defendant may have given in his answer. The plaintiff shall not introduce in his reply any matter not contained in his complaint. He shall either acknowledge the answer of the defendant to be true or simply and shortly deny the truth of such of the facts in the answer, as he intends to dispute, or simply deny the truth of the facts contained in it, or the competency of the answer. — *Ibid, Cl. 2.*

What is to be contained in the reply.

When the rejoinder is to be filed, & what it is to contain.

744. The defendant shall rejoinder to the reply. He shall not introduce in his rejoinder any matter not contained in his answer. He shall simply deny the truth of the reply of the plaintiff, or of those parts of it which he means to dispute, or aver the truth or competency of his own answer, and no further pleadings whatever shall be admitted in suits before the Moonsiffs. — *Ibid, Cl. 3.*

Stamped paper not requisite for certain documents.

745. In all suits tried in the courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamped paper. — *Reg. 5, 1831, Sect. 9, Cl. 2.*

The answer, reply, and rejoinder not to be on stamped paper.

746. In suits in which the plaintiff may delay to file his reply, or the defendant to file his rejoinder, within the fixed periods, the Moonsiffs are not required to postpone the trial of the suit on that account, but may proceed in it in the same manner, as if the reply or the rejoinder had been actually filed. — *Reg. 23, 1814, Sect. 25, Cl. 5.*

Notice to be affixed in the entcherry, if either of the parties shall be absent when the suit is first called over for trial.

747. In cases, in which the answer shall have been filed, and the parties or either of them shall fail to appear in person or by vakeel at the time, when the suit is first called over for trial, the Moonsiff shall suspend the trial, and shall affix in some conspicuous place in his entcherry, a notice that the suit will be again called over for trial after the expiration of a fixed period not being less than ten days. If the plaintiff shall not appear before the Moonsiff in person or by a vakeel duly authorized within the limited time, the Moonsiff shall dismiss his claim; if the defendant shall not so appear by the prescribed time the Moonsiff shall proceed to try the cause *ex-parte*. — *Ibid, Sect. 27, Cl. 1.*

Mode of proceeding, if notwithstanding such notice, either of the parties may fail to attend.

748. On a reference from the Judge of Moradabad, whether Act XXIX. of 1841 is to be considered as superseding the rule of procedure laid down for Moonsiffs, in cases of default of plaintiffs, in Clause 1, Section 27, Regulation 23 of 1814, and whether it is therefore incumbent on Moonsiffs to wait until the expiration of six weeks before dismissing suits for default:—It was held, that Act XXIX. of 1841 does not repeal any clause or Regulation allowing a Moonsiff to dismiss a case, after a prescribed and notified time, on default of plaintiff, within the period of six weeks, but only provides for the disposal of suits by dismissal, which under the rule heretofore in force, have been wont to remain longer than that term.—*Con. 1321, West. C. 15th Feb., Cal. C. 8th April 1842.*

Act 29, 1841 repeals no regulation allowing a M. to dismiss a case for default after a prescribed time, but orders suits to be positively dismissed at the end of six weeks.

749. On a reference from the Judge of Allahabad, relative to the applicability or otherwise of the provisions of Act XXIX. 1841, to the Moonsiffs' courts, in the stage of a case prior to the filing of the answer, the Courts of Sudder dewanny adawlut were of opinion that the Act in question must be held applicable in super-session of Construction No. 758, and that no suit can be struck off on default, prior to the filing of the answer, before the expiration of six weeks.—*Con. 1339 West. C. 15th May, Cal. C. 10th June 1842.*

No suit can be struck off on default prior to the filing of the answer, before the end of six weeks.

750. If the plaintiff absent himself previous to service of notice on the defendant or before the reply be in, the suit cannot be proceeded in and must be dismissed.—*Con. 870, West. C. 21st Feb., Cal. C. 7th March 1841, par. 1.*

If the plaintiff absent himself before the service of notice, or the filing the reply, the suit must be dismissed.

751. On the dismissal of a suit under Section 12, Regulation 3 1803, Clause 1, Section 27, Regulation 23, 1814, Clause 3, Section 12, Regulation 26 1814, the plaintiff is at liberty to institute a new suit for the same claim, as if the case had not been heard.—*Ibid, par. 2.*

On the dismissal the plaintiff may institute a new suit.

752. If there has been no decision on the merits of a case, but merely a dismissal pronounced on default, the omission of the word nonsuit, in the proceedings of the officer who disposed of the case, cannot be considered to bar the claim of the plaintiff to the admission of a summary appeal.—*Ibid, par. 3.*

If the case be dismissed on default, the omission of the word nonsuit does not bar the plaintiff's right of a summary appeal.

753. The Construction No. 859, having been under consideration of the Courts of Sudder dewanny adawlut for the Lower and North Western Provinces, is hereby rescinded, and it is hereby declared, in modification of Construction No. 1226, that Sections 10 and 12, Regulation 26, 1814, are applicable to the courts of the Principal Sudder Amceens and Sudder Amceens, but not to those of the Moonsiffs.—*Co. Ord. 20th Aug. 1841.*

Reg. 26, 1814, sec. 10 and 12, are not applicable to M.

754. The Moonsiffs are to try the suits depending before them by hearing the pleadings of the parties by examining their documents and by taking the depositions of their witnesses in the presence of the parties, or of their vakeels duly constituted. They may also examine the truth of the claim by the oaths of the parties, if they mutually consent to that mode of examination.—*Reg. 23, 1814, Sect. 28.*

Rules for the trial of suits depending before moonsiffs.

755. Repeated instances having been lately brought to the notice of the Court, evincing much want of attention on the part of the uncovenanted Judges, and of the vakeels and agents attached to their courts, to the rules prescribed for the preparation of pleadings, I am directed by the Court to request, that you will ascertain that every uncovenanted Judge in your district is furnished with translations of Section 25, Regulation 23, 1814; Clauses 2 and 4, Section 5, Regulation 26, 1814; and Section 9, Regulation 27, 1814. You will at the same time inform

The M. will be careful that the pleadings are drawn up strictly conformably with the regulations. The circulation of vakeels and agents will be severely punished.

the uncovenanted Judges, that it is their duty to see that the vakeels and agents, attached to their courts, draw up "the plaint," "the answer," "the reply," and "the rejoinder," as also "the reasons of appeal," and "the reply" thereto, in strict conformity to the Regulations, and the Court will hereafter hold any officer, who may be proved to be generally inattentive to this important subject, to have been guilty of gross neglect of duty, bringing him within the provision of Section 26, Regulation 5, 1831.—*Co. Ord. 8th Jan. 1841.*

## SECTION XLV.

*Trial of Suits by Moonsiffs—Witnesses.*

Stamped paper not requisite for certain documents

756 In all suits tried in the courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamped paper.—*Reg. 5, 1831, Sect. 9, Cl. 2.*

Cl. 1 and 2, Sec. 31, of Act, sec. 32, reg. 24, 1814, repealed

757 It is hereby enacted, that Clauses 1 and 2, Section 31, and Clause 1, Section 32 of Regulation 23 of 1814, of the Bengal code, are repealed.—*Act XVII 1845 Sect. 1.*

M. C. J., if process issued for the attendance of witnesses, which will be served by the M. C. J., whose jurisdiction he is

758. And it is hereby enacted, that within the territories subject to the Presidency of Fort William in Bengal, if any Moonsiff shall require the evidence of a person not within his local jurisdiction, and such person shall not attend at the requisition of the parties, the Moonsiff shall issue the necessary process for procuring the attendance of such person, and send the same to the Moonsiff within whose local jurisdiction such person is, who shall endorse such process and cause it to be duly served and executed.—*Ibid Sect. 2.*

All the powers exercised by zillah J. for enforcing the attendance of witnesses will be exercised by moonsiffs, but an appeal will be from their order to the J. C.

759. And it is hereby enacted, that within the said territories all powers now exercised by zillah Judges for enforcing the attendance of any person upon whom a summons to appear as a witness has been duly served, and who has failed to attend in their courts, shall, from and after the passing of the Act, be exercised by Moonsiffs for enforcing the attendance of any person upon whom a summons to appear as a witness has been duly served, and who has failed to attend in their courts: provided that all orders passed by Moonsiffs under this Act shall be subject to an appeal to the zillah or city Judge whose decision thereon shall be final.—*Ibid, Sect. 3.*

Moonsiffs authorized to summon witnesses who may not attend on the requisition of the parties

760 If the plaintiff or defendant shall be desirous of summoning any witnesses to appear before the Moonsiff, and such witnesses shall not attend at the requisition of the parties, the Moonsiff is authorized to summon as witnesses, any persons subject to his jurisdiction, excepting women whose rank may be such as to render it improper to require their appearance in public. When the evidence of such women is necessary, it is to be taken in the mode prescribed by Section 6, Regulation 4, 1793; Section 2, Regulation 8, 1795, and Section 7, Regulation 3, 1803.—*Reg. 23, 1814, Sect. 20, Cl. 1.*

Cases in which the evidence of witnesses required by moonsiffs may be taken on written interrogatories

761. If however the residence of the witness shall be at a considerable distance from the Moonsiff's catcherry, or if other circumstances should render it inconvenient or improper to compel the personal attendance of any witness, the Moonsiff is hereby authorized

and required to transmit to the Judge any written interrogatories, which he may think necessary, or which may be suggested by the parties or their vakeels, in the suit. On the receipt of such written interrogatories, the Judge will proceed to obtain the evidence of the witness in the mode prescribed by Section 6, Regulation 4, 1793; Section 2, Regulation 8, 1795; and Section 7, Regulation 3, 1803.—*Ibid*, Sect. 32, Cl. 2.

[For the mode of obtaining the examination of absent witnesses, vide Section 22 of this Chapter ]

762. The summons shall specify the number of the suit on the file, the name of the party, at whose request it may be issued, and the names and residence of the witnesses, and shall require them to appear at the cutcherry of the Moonsiff on a specific day; and there to depose concerning the matter in dispute between the parties.—*Reg. 23, 1814. Sect. 29, Cl. 2.*

What the summons shall contain

763. The Moonsiff shall deliver the summons to the party applying for it, or to his authorized vakeel, and such party or vakeel may either serve the summons himself or through any other person whom he may choose to employ for that purpose; provided however, that the name of the persons intended to be employed in this duty be in all cases notified to the Moonsiff, and endorsed on the summons previously to its being delivered to the party or his vakeel for execution.—*Ibid*, Cl. 4.

Mode in which the summons shall be served.

764. By clause third Section 29, Regulation 23, 1814, the Moonsiffs are prohibited from demanding or receiving any fee or issuing the prescribed summons for the attendance of witnesses, and by clause fourth the party or his vakeel is required to serve the summons in person. But as the strict observance of this rule may (especially in suits of the higher description such as the Moonsiffs are now competent to decide,) be attended with inconvenience, it is hereby declared that whenever the party at whose suit the process may be sued out, may be desirous of having the summons carried by a peon instead of serving it himself, or through any other person, it shall be competent to the Moonsiff to levy tulubanaah for that purpose.—*Reg. 7, 1832, Sect. 5, Cl. 1*

Moonsiff-competent to levy tulubanaah for the serving of process on the demand of the party who sues it out

765. In cases in which a witness duly summoned may attend before the Moonsiff, but shall refuse to give evidence, or to subscribe his deposition, the Moonsiff shall impose such fine upon him as may appear proper.—*Reg. 23, 1814, Sect. 31, Cl. 3.*

Where the witness attends, but refuses to give evidence, or to subscribe his deposition, he may be fined.

766. Sudder Ameens and Moonsiffs may also proceed, without reference to the zillah Judge, to the realization of fines imposed by them, provided that all orders passed by the Sudder Ameens and Moonsiffs under this section, be subject to an appeal to the zillah Judge.—*Act VI. 1843, Sect. 4.*

The fine may be realized, but it is subject to an appeal to the zillah judge.

767. The Moonsiffs are hereby strictly prohibited from confining or otherwise punishing witnesses, and they are enjoined to take the depositions of witnesses attending before them with all due expedition, so that they may not be exposed to any vexatious delay or unnecessary detention from their respective homes and employments.—*Reg. 23, 1814, Sect. 33.*

Witnesses not to be maltreated by moonsiffs or detained from their homes longer than may be necessary

The oath or solemn declarations of witnesses may be dispensed with by consent of the parties.

768. The Moonsiffs are at all times authorized to cause the examination of a witness to be taken on a solemn declaration, or even without such solemn declaration whenever the parties in the suit, or their respective vakeels, may voluntarily and mutually agree to such witness being so examined.—*Ibid*, Sect. 35.

Witnesses are not to be instructed or intimidated, and all leading & irrelevant questions are to be avoided.

769. In the examination of witnesses, the Moonsiffs are enjoined carefully to prevent the parties and their vakeels or agents from instructing or intimidating the witnesses or from putting to them leading questions, or questions suggesting a particular answer, questions also with regard to the personal character of the parties, or on points evidently irrelevant to the matter in dispute, are to be avoided as much as possible.—*Ibid*, Sect. 36.

What is to be contained in the deposition of a witness and how it is to be attested.

770. The deposition of every witness shall commence by specifying the name, the father's name, (or, if the deponent be a married woman the name of her husband,) the religion, cast, profession, age and place of residence of the deponent and shall be subscribed by the witness with his or her name or mark.—*Ibid*, Sect. 37.

Mode of summoning vakeels and other persons employed on the part of government, whose evidence may be required before Moonsiffs.

771. If any individual whose evidence is required shall be a person employed in the provision of the Company's movement under the Commercial Residents or in the provision of salt and opium under the Agent of Government, the summons shall be served in the same manner as is prescribed in Section 20 of this Regulation respecting the issue of notice to a defendant. The Moonsiffs will be careful not to summon such persons unnecessarily, and on their attendance shall cause them to be examined and dismissed with all practicable dispatch.—*Ibid*, Sect. 38.

Particular restrictions regarding the mode in which the depositions of witnesses are to be taken before Moonsiffs' courts.

772. The Court desire that all the civil authorities, in recording the depositions of witnesses, will, on all occasions, observe the rules described in the following extract (paragraph 21.) from the report of the Judge of Goruckpore on the administration of civil justice for the past year:—"My attention has been called to this subject partly from observing that there was no uniform mode of recording depositions of witnesses in the Moonsiffs' courts, and partly from the record itself proving a relation to the slander, easily insinuated by a disappointed suitor, that depositions in the lower court had been tampered. I believe, that in some cases, depositions were taken in the rough, and afterwards copied fair. It has come too under my observation, that the Native Judges have, in an off-hand fashion dismissed a claim upon the ground of gross discrepancies in the evidence, which could not be detected by me after the most careful perusal. From a consideration of these circumstances I directed that the depositions of all witnesses, in every court, in lieu of the old bi-columnar arrangement, with question on one side and answer on the other, should be continuously written according to the Sudder Nizamut's exemplar, appended to their Circular order, No. 54, 16th July, 1830; that the interrogations put to witnesses should be in order; first, by the party or his vakeel, at whose summons they attended; next, by the opposite party; last, by the Native Judge; that all the questions put should be numbered in a regular series; and that if by accident or other cause, it became necessary to make a fair transcript of the deposition that the original rough draft, of course similarly attested, should invariably be placed on the file. I am thus enabled to ascertain the care and attention with which depositions have been taken, and the lateness

is discernible from the Native Judge's own questions. They too have only, when they allude to discrepancies, to point out the numbers of the different questions in which the deponent's replies are open to this imputation.—*Cir. Ord. 18th May 1846.*

## SECTION XLVI.

*Trial of Suits by Moonsiffs—Exhibits.*

773. In all suits tried in the courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamped paper.—*Reg. 5, 1831, Sect. 9, Cl. 2.*

Stamped paper not requisite for certain documents

774. No fees shall be levied on exhibits filed before the Moonsiffs, and exhibits shall be received in suits depending before them, without any durkhaust or written application for that purpose.—The Moonsiffs are strictly prohibited from admitting or filing as an exhibit, or from receiving in evidence, any obligation instrument, bond, deed, or document, whether it be the original or a copy, the description which is or may be required to be written on stamped paper, unless it has been duly executed on stamped paper of the description value and denomination prescribed by the Regulations.—*Reg. 23, 1814, Sect. 28, Cl. 1.*

Exhibits in suits before moonsiffs are not liable to the payment of fees or stamp duty.

But no exhibits to be admitted which are not written on the prescribed stamped paper.

775. In a civil case, when a Moonsiff entertains doubts whether a document presented to him as an exhibit has been duly executed on paper bearing the prescribed stamp, he shall transmit such document, with a statement of the case, to the Judge for his opinion, and shall be guided by the instructions he may in consequence receive from the Judge, either in rejecting, or admitting such exhibit.—*Ibid. Cl. 2.*

Moonsiffs to report to the judge instances in which exhibits may appear to be written on stamped paper differing from the prescribed stamped paper.

*Vide Circular order, 5th January, 1842, page 191, No. 166.*

*Vide Circular order, 29th July, 1836, and 8th October, 1844, page 308, Nos. 493 and 494.*

776. When an exhibit is filed in a suit before the Moonsiff, it shall be dated and signed or sealed by him, and shall be marked with some letter or number to identify it, and such letter or number shall be distinctly referred to in those parts of the depositions of the witnesses, or of the proceedings, or of the decree, as may allude to such exhibit.—*Reg. 23, 1814, Sect. 38, Cl. 3.*

Exhibits are to be dated, signed and marked, and are to be described according to that mark in the proceedings and decrees.

777. Whenever occasion may require the examination and scrutiny of Native account-books in any civil case, the European Judges should, as far as possible, call in the aid of assessors for that purpose. In instances, however, where such a course may be deemed by them inexpedient, recourse should be had to the agency of ameens, to be appointed at the expense of the plaintiff or defendant, as the case may be, whose duty it should be to inspect the books either at the mahajun's house or in court, as might seem fitting with reference to the circumstances of the case and the wishes of the parties. And the latter course should also be followed by the Native courts, who are not authorized to employ assessors for the purpose stated.—*Cir. Ord. 4th Feb. 1840, par. 3.*

When a N. judge requires to examine native account books, he will depute an ameen to inspect them at the mahajun's house, or in court.

## SECTION XLVII.

*Administration of the Mahomedan and Hindoo Law of Inheritance by Moonsiffs.*

Provision for the due administration of the Mahomedan and Hindoo civil law in certain cases.

778. In all cases of inheritance of, or succession to, landed property, the Mahomedan Laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to regulate the decision; and the Moonsiffs, in all such cases where doubts exist, are to obtain an exposition of the law from the Law officers of the Zillah court, to whom they are to transmit a written abstract of the case for this purpose: such exposition however is not to preclude a further reference to the Law officers of the Zillah courts, upon such points of law as may arise upon the cause, in the event of its being tried in appeal. In causes in which the plaintiff is of a different religious persuasion from the defendant the decision is to be regulated by the Law of the latter, provided that this rule is limited to cases in which the defendant is either a Mahomedan or a Hindoo.—*Reg. 5, 1831, Sect. 6, Cl. 2.*

In all other cases Moonsiffs are to act according to justice, equity, and good conscience  
Idem

779. In cases in which the above rules cannot be applied, the Moonsiffs are to act according to justice, equity, and good conscience.—*Ibid, Cl. 3.*

780. The rules contained in the above clause, regarding cases of succession to real property, are intended exclusively for the guidance of Moonsiffs, such being the express tenor of the enactment —*Con. 706, Cal. C. 20th July, West. C. 17th Aug. 1832.*

*For the subsequent modification of the law of inheritance, vide Regulation 7, 1832, Section 9*

Rules to be observed in cases of succession to real property

781. In all suits concerning the succession or right of inheritance to a zemindary, talook, land, house, or other real property, the Moonsiffs are to affix in some conspicuous part of their cutcherries and to publish in the village, in or near to which the property is situated, a written notification of the claim preferred, with a requisition to all persons who may have any claim to the property sued for, to prefer the same within a limited period. and they are not to pass a decree in such suits, when there are more claimants than one who by the Hindoo or Mahomedan law (respect being had to the religion of the claimants) would be entitled to a portion of the property, excepting the property be by the decree adjudged to all the claimants in the proportions to which they may be respectively entitled.—*Reg. 5, 1831, Sect. 6, Cl. 1.*

The written notification as above, must precede the notice to defendant. Claimants coming forward will bear a share of the costs.

782. The written notification prescribed by Clause 4, Section 6, Regulation 5, 1831 should precede the usual notice to defendant. Claimants coming forward in obedience to such proclamations are liable to bear a proportion of costs.—*Con. 1293, West. C. 30th April, Cal. C. 30th July 1841*

The enquiry to be made under reg 5, 1831, sec. 6, cl. 4 must refer only to the rights in the property actually sued for, and not to the whole estate.

783. The enquiry to be made by the Moonsiff, under the provisions of Clause 4, Section 6, Regulation 5, 1831, is to be limited to the rights of claimants in the property actually sued for, and cannot extend to the entire estate of the deceased.—*Con. 1300, Cal. C. 18th June West. C. 9th July 1841.*

The application in consequence of the notice, issued under

784. The Court are of opinion that a petition, putting in a claim to a share of the property sued for in consequence of a notice issued under Clause 4, Section 6, Regulation 5, 1831

should be considered as an application "in relation to matters pending" before the court, and that, with reference to the omission of the Moonsiffs in Article 7, Schedule B, Regulation 10, 1829, and to the provisions of Clause 2, Section 9, Regulation 5, 1831, such application in the courts of the Moonsiff should not be written on stamped paper.—*Con. 706, Cal. C. 20th July, West. C. 17th Aug. 1832.*

reg. 5, 1831, sec. 6, cl. 4, need not be on stamped paper.

## SECTION XLVIII.

*Trial of Suits by Moonsiffs—Obstruction of Justice—Resistance of Process—Fines.*

785. Whereas sufficient provision is not made for repressing obstructions to justice committed in the courts of the East India Company;—It is hereby enacted that all persons whatsoever, whether generally amenable to the courts of the East India Company or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any zillah or city Magistrate, Joint Magistrate, or other officer under a Magistrate empowered to try criminal cases, or any superior or inferior court, civil or criminal, of the East India Company shall be liable to be fined by the authority whose proceedings are obstructed, to any amount not exceeding 200 rupees, or in case such fine be not paid to be imprisoned for any period not exceeding one month. Provided, that from the award of punishment in such cases an appeal shall lie, if preferred within one month, to the authority, civil or criminal, appointed by law to hear appeals in all other cases from the decisions of the officer by whom the fine was imposed: and, provided also, that notwithstanding any thing in this Act it shall be lawful to indict any person amenable to Her Majesty's Supreme Courts as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding shall have been had against the offender in the court where the offence was committed, but not otherwise.—*Act XXX. 1841. Sect. 1.*

All persons using menacing gestures, &c. or otherwise obstructing justice in the presence of any zillah or city Magistrate, &c. or any superior or inferior court, civil or criminal, may be fined not exceeding 200 rs, or if not paid imprisoned for one month. Party aggrieved may appeal within one month. Party, if not proceeded against under this act, may be indicted in her majesty's supreme courts

786. And it is hereby enacted, that Section 42; the further proviso contained in Section 74 Regulation 23, 1841. Clauses 2 and 3, Sections 5 and 6, Regulation 12 of 1825, of the Bengal code, are repealed.—*Ibid, Sect. 3*

Repeals sec 42, the further provision in sec 74, reg 23, 1841, cl 2 & 3, sec. 5 & 6, reg. 12, 1825.

787. And it is hereby enacted, that such parts of Regulation 23, 1841, as prohibit the Sudder Ameens and Moonsiffs from requiring security from defendants; or from attaching their property in cases pending before them; or from realizing fines imposed by them without first obtaining the sanction of the zillah Judge, be repealed.—*Act VI. 1843, Sect. 3.*

Repeals parts of reg 22, 1841, prohibiting S A and M from requiring security, &c.

788. And it is hereby enacted, that it shall be competent to the Sudder Ameens and Moonsiffs to demand security from the defendant, under the provisions of Sections 4 and 5, Regulation 2, 1806, in cases pending before them; and also to proceed, without reference to the zillah Judge, to the realization of fines imposed by them provided that all orders passed by the Sudder Ameens and Moonsiffs under this section be subject to an appeal to the zillah Judge.—*Ibid, Sect. 4.*

S. A and M may demand security under sec 4 and 5, reg 2, 1806, and may proceed for realization of fines without reference to zillah judge

789. The attention of the district civil authorities is called to the effect of Section 3, Act XXX. 1841, under which the prohibition against Moonsiffs realizing fines imposed by them

Act 30, 1841 is the sole law under which contempt of court



can be penally visited  
by the native tribunals

for disrespectful behaviour in open court, without previous report to the Judge, is removed, and according to which Principal Sudder Ameens and Sudder Ameens are left at liberty to realize by their own authority any fines which they may impose under the general Regulations; Section 42, and the further proviso of Section 74, Regulation 23, 1814, (the latter having been applicable to Principal Sudder Ameens agreeably to the first part of Clause 4, Section 18, Regulation 5, 1831,) having been both rescinded Act XXX. 1841 is thus the sole law under which contempt of court can be penally visited by the Native tribunals.—*Cir. Ord.* 16th Sept. 1842.

The N judges may  
of their own power  
proceed to realize  
fines imposed in re-  
ference to the stamp  
laws.

790. It has been ruled by the Court of Sudder dewanny adawlut that the Native judicial authorities are competent to proceed, of their own power, and without previous reference to you to the realization, by the usual process, of any fines [in reference to the breach of the stamp laws] imposed by them under the rule contained in Clause 1, Section 18, Regulation 10, 1829, subject to the usual course of appeal.—*Cir. Ord. Cal. and West. C.* 7th June 1839.

## SECTION XLIX

### *Decrees and Orders of Moonsiffs.*

The decision is to  
be passed after con-  
sideration of the  
pleadings, exhibits &  
evidence.

791. When the parties have been heard and the exhibits received and considered and the witnesses on both sides examined, the Moonsiff shall give judgment according to justice and right.—*Reg.* 23, 1814, *Sect.* 39.

What shall be con-  
tained in the decree

792. The decree shall specify the names of the parties, and the names of the witnesses examined, and the titles of the exhibits read. It shall also contain an abstract statement of the material facts alleged in the pleadings of both parties, and an elucidation of the principal grounds and reasons on which the decision may be passed. It shall state specifically the sum of money, or the value or amount of personal property adjudged and the amount of the costs or damages payable by the parties respectively.—*Ibid.*, *Sect.* 40.

Decrees, &c. of P  
S. A., S. A., or M.,  
shall be written in the  
vernacular language  
of such P. S. A., S. A.  
and M., and (as the  
case may be) trans-  
lated into the vernac-  
ular language of the  
court.

793. And whereas it is expedient, that excepting as regards the language to be used, Principal Sudder Ameens, Sudder Ameens, and Moonsiffs should be guided by the same rules as are hereinbefore provided for the guidance of the superior Judges.—It is hereby enacted, that in all the Presidencies so much of all decrees as consists of the points to be decided, the decision thereon, and the reason for the decision, which shall be passed by Principal Sudder Ameens, Sudder Ameens, or Moonsiffs, shall be written, originally in the vernacular language of such Principal Sudder Ameen, Sudder Ameen or Moonsiff, and signed by such Principal Sudder Ameen, Sudder Ameen, or Moonsiff, at the time of pronouncing such decision, and (in case such vernacular language shall not be the same as the vernacular language commonly used in the court wherein the suit to which the decree relates shall have been instituted,) shall be translated into such last mentioned vernacular language, and the translation shall be incorporated in the decree.—*Act XII.* 1843, *Sect.* 3.

794. *Moonsiffs will also be guided by Circular order, 16th August, 1844, p. 322, Nos. 579—582, and by Circular order, 28th February, 1845, Nos. 583 and 584.*

795. If any claim shall appear to the Moonsiff to be evidently litigious and vexatious, he shall adjudge suitable costs and damages against the plaintiff, and insert the same in the mode above directed in the decree.—*Reg. 23, 1814, Sect. 40.*

Costs and damages to be awarded in the decree in suits which may appear to be litigious or vexatious.

796. Section 40, Regulation 23, 1814, does not authorize the imposition of a fine for a litigious or vexatious suit. Fines are leviable only on account of Government. If damages are awarded, they belong to the party declared by the decree to be entitled to them. In such case the damages form part of the decree, and unless the party dissatisfied with its appeal, the decree will be executed, without reference to the Judge, in the same manner as other decrees of court.—*Con 966. Cal. C. 17th July, West. C. 28th Aug. 1935.*

Reg. 23, 1814, sec. 40 does not authorize the imposition of a fine for a litigious & vexatious suit.

797. When the decision shall have been thus passed, the Moonsiff shall cause two copies of it to be prepared, and after attesting them with his seal and signature shall, within one week after the date of the decree, tender the said copies in open entcherry, both to the plaintiff and defendant or to their vakeels respectively; he shall endorse on the back of the said copies the actual date on which they may be tendered to the parties in open entcherry, and if either or both of the parties shall fail to attend, or shall refuse to receive the copies so tendered, he shall certify the same on the back of the copies.—*Reg. 23, 1814, Sect. 41, Cl. 1*

Two copies of the decree to be prepared and tendered to the parties

The date of the tender and the cause of the non-delivery of the copies to be certified by the M and endorsed on the back of the copies

798. The rule prescribed to the Judges and Registers of the Zillah and City courts, for endorsing on the copies of decree delivered or tendered by them, as well as inserting in their records, the date of delivering or tendering such copies, is also to be carefully observed by the Native Commissioners, that the exact period of such deliveries or tenders may be at all times ascertainable; and the Judges are to communicate this rule to the Native Commissioners within their respective jurisdictions, for their information and guidance.—*Reg. 2, 1805, Sect. 8*

Rule prescribed to the zillah judges and registers endorsing and recording the date of delivering, or tendering copies of decrees, to be also carefully observed by the native commissioners.

799. Held, on a reference from the Judge of Allahabad, that the period allowed for appealing from the orders of Moonsiffs in miscellaneous cases (copies of which orders are to be granted on plain paper,) should be calculated from the date of the order appealed from, deducting the interval that may elapse between the date of the copy being applied for, and its being ready for delivery. The Moonsiffs should always note on the copy the date of application for the copy, and that of its being ready for delivery.—*Con 1323, West. C. 26th March, Cal. C. 8th April 1842.*

Mode in which the period for appealing from an order of the moonsiff is to be calculated.

800. The Moonsiffs will, as heretofore required to do, prepare and tender to the parties copies of each decree or final order which they may pass, within one week from the date thereof, the rule being equally applicable to Sudder Ameens and Principal Sudder Ameens in suits referred to them under Section 5, Act XXV. of 1837. In all other cases, the functionaries of the two latter grades are hereby required to have every decree and final order prepared within the same period.—*Cir. Ord. Cal. and West. C. 20th Sept. 1839, par. 7.*

M will prepare and tender to the parties copies of each decree or final order, one week from the date of it.

801. Any Moonsiff who may be guilty of wilfully misstating, or falsifying, or of causing to be misstated or falsified, the date and purport of the endorsement above directed to be written on the copies of the decrees, or of keeping back such copies of de-

Penalty for falsifying the date and purport of the endorsement and for keeping back copies of the

decree from either of the parties.

crosses from either of the parties, with the view of defeating or opposing a bar to their right of appeal shall, on proof thereof to the satisfaction of the Provincial court, be liable to dismissal from office, and to such discretionary fine to Government as may be deemed proper by that court.—*Reg. 23, 1814, Sect. 41, Cl. 2.*

Stamped paper not requisite for certain documents

802. In all suits tried in the courts of the Moonsiffs, the pleadings, the applications of parties for the filing of exhibits, as well as for the attendance of witnesses, and the copies of decrees, need not be written on stamped paper.—*Reg. 5, 1831, Sect. 9, Cl. 2.*

The particulars which are to be noted on the copy of every decree and order by the M

803. The Court take this opportunity of observing that, owing to the want of the requisite information on the back of copies of decrees and orders appealed from, doubts have frequently arisen as to the precise time an appellant is entitled to claim as a deduction from the period prescribed for appealing in consequence of the stamped paper given in for the copy of the decree or order remaining in the scrihta of the lower courts, and also whether any delay which may have occurred is fairly attributable to the party petitioning for the admission of an appeal. The Court are accordingly pleased to direct that in future on the copy of every decree and order granted by you, you cause to be endorsed the particulars noted below, and that you strictly enjoin the observance of the same rule by the Principal Sudder Ameen, Sudder Ameen and Moonsiff, within your jurisdiction —[ Where a pauper may be a party, or where the decree may have been passed in a Moonsiff's Court.] On the — 1810, the pauper or other party failed to attend, after due notice, in person or by vakcel, and the copy was accordingly deposited among the records.—*Cir. Ord 8th May 1810.*

[For the mode in which decrees are to be prepared vide Circular order, 12th February 1847, page 324—327 of this volume.]

## SECTION I.

### *Razeenamahs in Moonsiffs' Courts*

The institution to which to be returned in cases adjusted by razeenamah before the moonsiffs

804. The provisions of clauses second and third, Section 3, Regulation 13, 1824 are declared applicable to cases adjusted by razeenamah in the Moonsiffs' courts.—*Reg. 7, 1832, Sect. 6, Cl. 2.*

Stamp duty in original suits & appeals referred to S A how to be disposed of when such suits are adjusted by razee-namah

805. In original suits and appeals referred to Sudder Ameens, and adjusted by razeenamah, after the 1st May, 1824, if the razeenamah be filed before the pleadings are completed and read, the full amount of the stamp duty paid on the institution of the suit or appeal shall be returned to the party who may have paid the same, or to his legal representative; or a moiety of the stamp duty so paid shall be returned if the razeenamah be filed after the pleadings have been completed and read.—*Reg. 13, 1824, Sect. 3, Cl. 2*

A monthly statement of stamp duty receivable by the parties entitled thereto to be furnished by the S A

806. The several Sudder Ameens are required to submit to the Judges and Registrars, with whom they are respectively stationed, a monthly statement of the stamp duty receivable by the parties entitled thereto under the above clause; and the Judges after ascertaining the correctness of such statements, will take the necessary measures for cau--

ing payment to the parties entitled thereto in pursuance of Section 25, Regulation 26, 1814.—*Ibid*, Cl. 3.

807. It appearing from the returns to the circular issued by the Court, under date the 27th October last, that several of the Moonsiffs in these provinces refuse to receive razeenamahs in cases depending before them if not written on stamped paper, I am directed to inform you that as by Article 10, Schedule B, Regulation 10 of 1829, it is provided that razeenamahs shall bear the stamp prescribed for pleadings in the court wherein they may be filed, and under the provisions of Clause 2, Section 9, Regulation 5 of 1831, the pleadings in the Moonsiffs' courts are not required to be written on stamped paper, the practice above referred to is irregular, and should be strictly prohibited wherever it may exist. You will consider this prohibition to extend equally to razeenamahs filed in the Moonsiffs' courts in cases of execution of decrees.—*Cir. Ord. Cal. C 20th July, West. C. 3d Aug 1838.*

Razeenamahs filed in M's courts should not be on stamped paper

\* 808. With reference to my Circular letter of the 10th May last [vide Rule below. 810.] I am directed by the Court to forward to you the accompanying copy of a letter from the Judge of zillah Purneah, dated the 28th June last; and to request that in the event of there being no tehseldars in your district, or, any particular purgunnahs of it, you will adopt the mode of practice decided in the 4th paragraph of that letter, for the repayment to plaintiffs in suits decided by razeenamah of the value of stamp to which they are entitled.—*Cir. Ord. 9th Aug. 1833, par. 1.*

Made to be adopted for the repayment to plaintiffs in suits decided by razeenamah in the courts of M, the value of the stamp to which they are entitled.

509. I beg accordingly to submit the following plan; that on the adjustment of a case by razeenamah, the plaintiff, wishing to have refunded the amount of the plaint paper, should petition the Moonsiff for the same, on plain paper of course; that the Moonsiff, endorsing on the petition the number of the suit and date of decision, should forward it to the Judge, who, on ascertaining the correctness of the application by reference to the nuthee can give the certificate prescribed in Schedule B, Regulation 10, 1829, and transmit it with the paper on which the plaint is written, (all nuthees of cases decided are sent by the Moonsiffs at the end of the month for record in the Judge's office) to the Collector; that officer having taken the necessary measures for ascertaining the genuineness of the paper, can return the plaint, with the amount to be refunded, to the Judge; the plaint would be again filed with the nuthee and the money sent to the Moonsiff, who would pay it to the party entitled to it, and having done so would forward his receipt to the Judge.—*Ibid*, par. 4

Idem

5

810. Any Moonsiff or Sudder Ameen above described, who may direct the re-payment of the institution fee to a party in a case adjusted by razeenamah, shall send to the Collector the stamped paper on which the petition of plaint is written, with the certificate required by Schedule B, Regulation 10, 1829. The Collector shall, on the receipt thereof, transmit the stamped paper to the Stamp Office for examination. On its return to his office, duly examined, the Collector shall return the same to the Moonsiff or other deciding officer, together with an order for the amount in favor of the party entitled to receive it, addressed to the tehseldar, whose cutcherry may be nearest to that of the Moonsiff or officer who decided the suit; or where there are no tehseldars, on the treasurer of the district. This order will be delivered by the Moonsiff or other officer to the party, with directions to apply to the tehseldar, or treasurer, as the case may be, for the sum due to him; and, as it will form the authority for the payment by that

Idem

officer, it should be carefully retained as such in his office.—*Cir. Ord. Cal. and West. C.* 10th May 1833.

*Idem*

811 In continuation of the Circular order, under date the 25th October, 1833,\* prescribing certain rules for the repayment of the amount of stamp in certain cases adjusted by *razee-namah* before *Moonsiffs* and *Sudder Ameens* at out-stations, I am directed to transmit for your information the annexed extract of a letter from the officiating Accountant in the Revenue and Judicial department, dated the 30th September last, to the Government, and to request that you will adopt the practice suggested by that officer. The rules of practice adopted by the *Sudder dewanny adawlut* in the Western Provinces, under the orders of Government of 7th October last, and detailed in the 2d paragraph of Mr. Register Jackson's letter of the 18th July last, are unobjectionable. I would, however, beg leave to suggest that the *Moonsiffs* and *Sudder Ameens* be instructed to deliver to the parties both the authenticated certificate and the Collector's orders for payment, with the view to the delivery of both documents by the party claiming the refund to the *tehsildar*, to enable that officer to forward them to the Collector's office for transmission to this department, as vouchers in support of the debts to be made under "stamp duties" in the Collector's treasury account.—*Cir. Ord. West. C.* 14th Nov. 1834

## SECTION II.

### *Trial of Suits by Sudder Ameens—General Rules.*

Suits for claims of what amount, and of what nature cognizable by S. A.

812 The *zillah* and city Judges are hereby declared competent to refer to any of the *Sudder Ameens* subject to their authority for trial and decision any original suits depending or instituted in their courts for money or other personal property, or for the property or possession of land, or of other real property, the amount or value of which, calculated according to the rules specified in No. 8 of the Schedule B, referred to in Section 17, Regulation 10, 1829, may not exceed one thousand rupees. Provided however, that no suit shall be referred for trial to a *Sudder Ameen* in which he himself or his relatives, or dependants, or the *vakeels* or officers of his court shall be a party, or in which an European British subject, an European foreigner or an American shall be a party.—*Reg.* 5, 1831,  *Sect.* 15,  *Cl.* 2

Proviso

Original suits how to be tried and determined by S. A.

813 Original suits referred to a *Sudder Ameen* under the preceding clause, shall be tried and determined in conformity with the provisions of Regulation 23, 1814.—*Ibid.*  *Cl.* 3.

Rules to be followed in cases not expressly provided for

814 In points not expressly provided for by the foregoing rules, the *Sudder Ameens* shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the *Zillah* and City courts in the trial and decision of original civil suits.—*Reg.* 23, 1814,  *Sect.* 74.

*Sudder ameens* are themselves to investigate suits referred to them

815. The *Sudder Ameens* are themselves to investigate the suits referred to them in a public *cutcherry* or court-room, and are not to allow their officers, servants, or dependants, or any other person to interfere therein.—*Ibid.*  *Sect.* 71.

\* See Circular orders of 10th May, and 9th August, 1833, above.

816. The provisions contained in Sections 18 and 23; clause fourth, Section 25; in Sections 26, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 46, 47, 48 and 49 of this Regulation, are hereby declared to be equally applicable to original suits referred to Sudder Ameen as to those tried by Moonsiffs. The special rules prescribed in Sections 57, 58 and 59, shall likewise be strictly observed by the Sudder Ameen in all suits, which may be referred to them relative to the inheritance of or succession to landed property.—*Reg. 23, 1814, Sect. 73.*

Recital of the provisions of this regulation which are applicable to suits tried by sudder ameen.

817. I am directed to request you will submit, for the consideration of the Calcutta Court the accompanying copy of a letter from the Judge of Zillah Ghazee-pore, under date the 2d instant, soliciting the opinion of the Court as to whether suits, in which the Government or its officers may be a party are referrible, under the provisions of Act XXV. of 1837, to Principal and other Sudder Ameen.—*Reply*—The Court are decidedly of opinion that it was not the intention of the Legislature to exclude cases of the nature of those described by Mr. Smith from the cognizance of the Principal and other Sudder Ameen, and that consequently they are referrible to those officers, at the discretion of the Judge in like manner with all other cases legally within their competency to dispose of.—*Con. 1112 10th Nov 1837*

Suits in which govt and its officers are parties are referrible to principal and other S. A.

818. A Sudder Ameen should decide a suit in which the parties are Mahomedans according to the Mahomedan law, taking a fatwa from the Law officer if necessary.—*Con. 424, 30th June 1826*

How a S. A. is to decide a case connected with Mahomedan law

*The Sudder Ameen are desired strictly to conform to the provisions of Circular Order of 13th September 1843, (p. 287, Nos. 372—375)*

*Farther rules regarding the reference of suits to Sudder Ameen are given in Act IX 1844, (p. 88, Nos. 490—492)*

*The rules in Circular Order, 18th January, 1844, (p. 245, Nos. 171 and 172,) apply to Sudder Ameen*

*The rules regarding default, Act XXIX 1841, Sections 1, 2, 3, (p. 282, Nos. 350—352,) and the Circular Order, 3d January, 1845, paras. 1, 2, 3, (p. 283, Nos. 355—357,) are also applicable to Sudder Ameen.*

*Regarding the number of suits which a Sudder Ameen is required to decide in the month, vide No. 706 of this Chapter.*

#### *Plaints and Stamps.*

*Regulation 23, 1814, Section 18, (Rule 719 of this chapter) is applicable to Sudder Ameen. —Reg. 23, 1814, Sect. 73.*

*For the value of the stamped paper on which petitions of plaints must be written, vide Chapter II., page 211.*

819. A summary appeal may be had from a nonsuit passed under Article 8, Schedule B, Regulation 10 of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been understated by him, and that consequently the order passed by the Sudder Ameen or Principal Sudder Ameen was erroneous.—*Con. 872, West. C. 21st Feb., Cal. C. 21th Oct. 1834, par. 2.*

Case in which there may be a summary appeal from a nonsuit under art. 8, sch. B, reg. 10, 1829

*For the stamp duty on petitions, applications and durkhaasts presented to the Sudder Ameen, vide Chapter II., page 209*

Course of procedure where more than one stamp is required for engrossing plaints

820. To remove doubts, which are believed to exist, I am desired by the Court to intimate to you, with the sanction of the Government, that in cases in which more than one stamp is required for engrossing petitions of plaint or appeal, or petitions presented by persons desirous of appealing as paupers under the provisions of Clause 1, Section 12 Regulation 28, 1814, it is optional to parties to file several stamps, the aggregate value of which will be equal to the amount prescribed by law, or one stamp of the full value, with as much plain paper attached thereto as may be required — *Civ. Ord. 28th Aug 1840*

Suits referred by zillah judge, under sec 7, reg 5, 1831, to a S. A., or P. S. A., shall be subject to the same rules in regard to stamps as suits tried by a M.

821 And it is hereby enacted, that whenever a zillah or city Judge within the said territories in the exercise of the discretion vested in him by Section 7, Regulation 5, 1831, of the Bengal code, shall refer for trial to a Sudder Ameen, or Principal Sudder Ameen a suit within the competency of a Moonsiff to decide, such suit shall be subject to the same rules in regard to stamp duties, and to the same rules in regard to appeal as the said suit would have been subjected to had it been received and tried by the Moonsiff in the first instance — *Act XXI. 1837, Sect. 5*

Case in which such a suit is subject to the stamp duty prescribed for S. A.'s courts

822 When a suit for an amount not exceeding 500 rupees is referred to a Sudder Ameen in consequence of some special circumstance taking it out of the cognizance of a Moonsiff, it falls within the rule of Section 5, Regulation 25, 1837, and is subject to the stamp duty prescribed for suits in the Sudder Ameen's courts — *Cal. C. 10th, West. C. 24th April 1840.*

The same stamp to be sufficient in any other court as in that of Sudder Ameen, for the like cause

823. And it is hereby enacted, that in all suits which in respect to value are cognizable by a Sudder Ameen, the same stamps shall be sufficient in any other court as would have been sufficient in the court of a Sudder Ameen — *Act IX. 1844 Sect. 5*

#### Notice

Process of the Sudder Ameen how to be issued

824. So much of the rule contained in Section 74 of the said Regulation (Regulation 23, 1814,) which requires that every notice, summons, attachment, or other process relative to any cause depending before a Sudder Ameen shall be issued under the official signature of the Judge or Register is hereby rescinded, such processes, signed and sealed by the Sudder Ameen, shall issue through their own officers and not as heretofore under the signature of the Judge through the nazir of the court — *Reg. 5, 1831, Sect. 15 Cl. 4.*

Particular instructions relative to the serving of the processes of S. A.

825. Application having been made to the Court for information as to the manner in which the process of Sudder Ameen, in suits pending before them, is to be issued under Clause 4, Section 15, Regulation 5, 1831, I am directed to inform you, that such process is to be issued through peons, entertained in the same manner, and subject to the same rules, as those employed heretofore under the nazir of the court, but without the interference of that officer which is expressly prohibited by the concluding words of the clause quoted. The Sudder Ameen are not entitled to any profit from this source, being prohibited from receiving any emolument from their office beyond the salary allowed by Government. The peons entertained should be registered and distinguished by badges, as provided for by Section 14, Regulation 26 of 1814, see Section 5, Regulation 7, 1832. — *Civ. Ord. Cal. and West. C. 11th May 1832*

826. Held, on a reference from the Judge of Dinagapore, that the processes of the Principal Sudder Ameens and Sudder Ameens, required to be enforced in another zillah, should be issued under their seal and signature, as prescribed by Clause 4, Section 15, Regulation 5 of 1831, and with reference to Clause 3, Section 2, Regulation 2, 1806, be sent by the Sudder Ameen to the Judge of the Zillah or City court in which they are to be executed.—*Con.* 1235. *West C.* 19th July, *Cal. C.* 9th Aug. 1839. How the process of the S A is to be served in another zillah

827. The Construction No. 859, having been under the consideration of the Courts of Sudder dewanny adawlut for the Lower and North Western Provinces, is hereby rescinded ; and it is hereby declared, in modification of Construction No. 1226, that Sections 10 and 12, Regulation 26, 1814, are applicable to the courts of the Principal Sudder Ameens and Sudder Ameens, but not to those of the Moon-iff.—*Cir. Ord.* 20th Aug. 1841. The rules in reg 26, 1814, sec 10 & 12, are applicable to the courts of P S A and S A

828. Held, on a reference from the Judge of Purneah, that the rule in Section 24, Regulation 12, 1817, which requires putwarces to produce their accounts when required by the Courts of justice, is applicable to the subordinate courts : Mooniffs who may require to put the rule in force should send the putwarce with a proceeding to that effect to the zillah Judge —*Con.* 1346. *Cal. C.* 24th Jan., *West C.* 2d Aug. 1842. S A may require putwarces to produce their accounts

#### *Security from Defendants*

*Rule Act I ;* 1813, Sections 4 and 5, p. 355, Nos. 787 and 788.

#### *Pleadings.*

*For the value of the stamp on pleadings before the Sudder Ameens, vide Chapter II., page*

*The reservation made by Regulation 25, 1837, Section 5, (No. 821 of this chapter,) must also be carefully attended to in reference to pleadings.*

*Act XXIX.* 1841, Sections 1, 2, 3, (Nos. 350—352, p. 282,) apply to Sudder Ameens.

#### *Vakels.*

*For vakels in Sudder Ameens courts, vide Chapter II. p. 156, Nos. 265—267*

#### *Witnesses*

*Regulation 23, 1814, Section 33, (Rule 767, of this chapter,) Section 36, (Rule 769,) and Section 37 (Rule 770) are extended to the courts of Sudder Ameens by Regulation 23, 1814, Section 73*

*For rules regarding perjury in the courts of Sudder Ameens vide Rules 482, 483, 484 and 485 of this chapter.*

*For the stamp fees on applications, for summoning witnesses, vide page 214.*

*For rules regarding talabanaah, vide Chapter II., Rule 135. Vide also Act I I 1813 Sections 3 and 4, Nos. 736 and 737, page 217*

#### *Notice to file Exhibits and summon Witnesses*

*For rules on this subject, vide Nos. 382, 383 and 384 of this chapter*

#### *Exhibits.*

*The rules contained in Regulation 23, 1814, Section 38, Clauses 1, 2 and 3, (Rules 774,*



775 and 776 of this chapter) are made applicable to *Sudder Ameens* by Regulation 23, 1814, Section 73.

*For the stamp duty on petitions regarding the filing of exhibits vide page 209.*

*Vide Circular order, 7th January, 1812, and Construction No. 1331, Nos. 466—473, pages 191 and 192*

*Circular order, 29th July, 1836, which was by that Circular made applicable to the courts of Sudder Ameens is recapitulated and enforced by Circular order, 8th October, 1841, No. 494, page 305*

#### *Decree and Decret.*

*Vide Circular order, 12th February, 1847, Section 32 of this chapter, pages 324—327.*

*The rules contained in Regulation 23, 1814, Section 39, (No 791 of this chapter) Section 10, (No 792) and Section 41 Clauses 1 and 2, (Nos. 797 and 801) are extended to the courts of Sudder Ameens by Regulation 23, 1814 Section 73.*

*For the stamp duty on copies of decrees, vide page 208*

*Vide Act XII 1843 Section 3, page 219.*

*The rules regarding decrees, Act XII 1843 Section 1 and Circular order, 16th August 1844, and 25th February 1845 Nos. 577, and 579-584, pages 321 and 322, apply to Sudder Ameens*

S A will prepare and tender to the parties, copies of each decree or final order within one week of its date

829. The Moonisfil's will, as heretofore required to do, prepare and tender to the parties copies of each decree or final order which they may pass, within one week from the date thereof, the rule being equally applicable to Sudder Ameens and Principal Sudder Ameens, in suits referred to them under Section 5, Act XXV of 1837, in all other cases, the functionaries of the two latter grades are hereby required to have every decree and final order prepared within the same period.—*Cir. Ord. Cal. and West. C. 20th Sept. 1839, par. 7.*

#### *Razzenamah.*

Stamp duty on original suits & appeals referred to Sudder Ameens how to be disposed of when such suits are adjusted by Razzenamah

830 In original suits and appeals referred to Sudder Ameens, and adjusted by *razzenamah*, after the 1st May 1821 if the *razzenamah* be filed before the pleadings are completed and read the full amount of the stamp duty paid on the institution of the suit or appeal shall be returned to the party who may have paid the same, or to his legal representative, or a moiety of the stamp duty so paid shall be returned if the *razzenamah* be filed after the pleadings have been completed and read.—*Reg. 13 1824, Sect. 3, Cl. 2*

A monthly statement of stamp duty receivable by the parties entitled thereto to be furnished by the Sudder Ameens

831. The several Sudder Ameens are required to submit to the Judges and Registrars, with whom they are respectively stationed, a monthly statement of the stamp duty receivable by the parties entitled thereto under the above clause; and the Judges after ascertaining the correctness of such statements will take the necessary measures for causing payment to the parties entitled thereto in pursuance of Section 25, Regulation 26 1814.—*Reg. 13, 1824. Sect. 3, Cl. 3.*

*Obstruction of Justice—Resistance of Process—Fines.*

832. Whereas sufficient provision is not made for repressing obstructions to justice committed in the courts of the East India Company:—It is hereby enacted, that all persons whatsoever, whether generally amenable to the courts of the East India Company or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any zillah or city Magistrate, Joint Magistrate, or, other officer under a Magistrate empowered to try criminal cases, or any superior or inferior court, civil or criminal, of the East India Company, shall be liable to be fined by the authority whose proceedings are obstructed, to any amount not exceeding 200 rupees, or in case such fine be not paid, to be imprisoned for any period not exceeding one month. Provided that from the award of punishment in such cases an appeal shall lie, if preferred within one month, to the authority, civil or criminal, appointed by law to hear appeals in all other cases from the decisions of the officer by whom the fine was imposed; and, provided also, that notwithstanding any thing in this Act, it shall be lawful to indict any person amenable to Her Majesty's Supreme Courts as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding shall have been had against the offender in the court where the offence was committed, but not otherwise.—*Act XXX 1841, Sect. 1.*

All persons using menacing gestures, &c. or otherwise obstructing justice in the presence of any zillah or city magistrate, joint magistrate, &c. or any superior or inferior court, civil or criminal, may be fined not exceeding 200 r., or if not paid imprisoned for one month. Party aggrieved may appeal within one month; party, if not proceeded against under this act, may be indicted in her majesty's supreme courts.

833. And it is hereby enacted, that such parts of Regulation 23, 1814, as prohibit the Sudder Amceens and Moonsiffs from requiring security from defendants; or from attaching their property in cases pending before them; or from realizing fines imposed by them without first obtaining the sanction of the zillah Judge, be repealed.—*Act 17, 1843, Sect. 3*

Repeals parts of reg. 23, 1814, prohibiting S. A. and M. from requiring security, &c.

834. And it is hereby enacted, that it shall be competent to the Sudder Amceens and Moonsiffs to demand security from the defendant, under the provisions of Sections 4 and 5, Regulation 2, 1806, in cases pending before them; and also to proceed, without reference to the zillah Judge, to the realization of fines imposed by them, provided that all orders passed by the Sudder Amceens and Moonsiffs under this section, be subject to an appeal to the zillah Judge.—*Ibid, Sect. 1.*

S. A. and M. may demand security under sec. 4 & 5, reg. 2, 1806, and may proceed to realization of fines without reference to zillah judge.

835. The attention of the district civil authorities is called to the effect of Section 3, Act XXX, 1841, under which the prohibition against Moonsiffs realizing fines imposed by them for disrespectful behaviour in open court, without previous report to the Judge, is removed, and according to which Principal Sudder Amceens and Sudder Amceens are left at liberty to realize by their own authority any fines which they may impose under the general Regulations; Section 42, and the further proviso of Section 74, Regulation 23, 1814, (the latter having been made applicable to Principal Sudder Amceens agreeably to the first part of Clause 4, Section 18, Regulation 5, 1831,) having been both rescinded, Act XXX 1841 is thus the sole law under which contempt of court can be penally visited by the Native tribunals.—*Cn. Ord. 16th Sept. 1842.*

Act 30, 1841, is the sole law under which contempt of court can be punished by the native tribunals.

836. Held by the Western Court, in concurrence with the Calcutta Court, on a reference from the Judge of Furruckabad, that it would be objectionable to allow the Native judicial functionaries to exercise, at their discretion, the power of imposing fines on the Collectors

Native judges may not fine collectors for not conforming to their orders, when their orders are not

executed a report  
must be made to the  
judge

of their respective districts for not conforming to the orders of their court ; and that their proper course, where their orders are not carried into effect, is to report the particular circumstances of each case, as it may arise, to the Judge, leaving that officer to take such steps in the matter as he may deem proper consistently with the Regulations — *Con.* 1193, 21st Dec. 1836.

## SECTION LII

### *Trial of Suits by Principal Sudder Ameens.—General Rules.*

Suits where & how  
to be investigated by  
P S A

837. The Principal Sudder Ameens are themselves to investigate the suits referred to them in a public cutcherry or court-room, and are not to allow their officers, servants, or dependants, or any other person to interfere therein.— *Reg.* 5, 1831,  *Sect.* 18,  *Cl.* 2.

Rules to be observ-  
ed by P S A in the  
trial and decision of  
cases.

838. In the trial and decision of original suits and appeals referred to them, the Principal Sudder Ameen shall be guided by the rules established for the conduct of business in the courts of the Sudder Ameens. And in points not expressly provided for by those rules, they shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah and City courts — *Ibid.*,  *Cl.* 1.

Modified et al, see  
18, reg 5, 1841, P S  
A to be guided by the  
rules established in  
courts of zillah and  
city judges

839. In modification of Clause 4, Section 18, Regulation 5 of 1831, Bengal code, it is hereby enacted, that in the trial and decision of all original suits referred to them by the Judge, the Principal Sudder Ameens shall be guided by the rules established for the conduct of business in the courts of the zillah and city Judges.— *Act VI* 1843,  *Sect.* 1

### *Vakeels*

What vakeels to  
practise in their  
courts

840. It shall be competent to the zillah and city Judge to authorize any of the vakeels of his court, or of those attached to the Sudder Ameens, to practise in the court of the Principal Sudder Ameen — *Reg.* 5, 1831,  *Sect.* 18,  *Cl.* 3

### *Nazirs*

The P S A and  
S A shall retain on  
their establishment  
nazirs

841. The Principal Sudder Ameens and Sudder Ameens shall retain on their establishments, officers denominated nazirs, to whom the provisions of Clause 8, Section 14 Regulation 26, 1814, shall be applicable — *Reg.* 7, 1832,  *Sect.* 5,  *Cl.* 5

### *Stamps*

Duties chargeable  
on law papers in the  
P S A's courts

812. The duties chargeable on law papers in the courts of the Principal Sudder Ameens shall be regulated according to the rates fixed in Schedule B referred to in Section 17, Regulation 10, 1829, for the courts of the zillah and city Judges.— *Reg.* 5, 1831  *Sect.* 20.

Stamp duties charge-  
able in the courts of  
the P S A in cases  
above 5,000 rs

843. The Court observe that under the rule contained in Section 20, Regulation 5, 1831 the pleadings in all cases up to 5000 rupees in amount or value, referred for trial and decision to the Principal Sudder Ameens, are required to be written on stamped paper of one rupee value, and as Act XXV. 1837 in enlarging the powers of those officers makes no provision on the point under reference, they are of opinion that as the law now stands the same rule must be held to apply in respect to cases made over to the Principal Sudder Ameens under Section 1. of Act XXV 1837.— *Con.* 1118,  *West. C.* 15th Dec. 1837,  *Cal. C.* 5th Jan. 1838,  *par.* 2.

844. And it is hereby enacted, that whenever a zillah or city Judge, within the said territories, in the exercise of the discretion vested in him by Section 7, Regulation 5, 1831, of the Bengal code, shall refer for trial to a Sudder Ameen, or Principal Sudder Ameen, a suit within the competency of a Moonsiff to decide, such suit shall be subject to the same rules in regard to stamp duties and to the same rules in regard to appeal as the said suit would have been subjected to had it been received and tried by the Moonsiff in the first instance.—*Act XXV. 1837, Sect. 5.*

Suits referred by zillah judge, under sec. 7, reg. 5 of 1831, to a S. A., or P. S. A., shall be subject to the same rules in regard to stamps and appeal as if they had been tried by a M.

845. And it is hereby enacted, that whenever a zillah or city Judge within the said territories shall refer for trial to a Principal Sudder Ameen a suit within the competency of a Sudder Ameen to decide, such suit shall be subject to the same rules in regard to stamp duties, and to the same rules in regard to appeal, as the said suit would have been subjected to, had it been referred to and tried by the Sudder Ameen in the first instance.—*Ibid, Sect. 7.*

Suits referred for trial to a P. S. A., shall, if within the competency of a S. A., be subject to the same rules in regard to stamp duties and appeal, as if they had been referred to the S. A. in the first instance.

846. In the case of a suit transferred from the court of the Sudder Ameen to that of the Principal Sudder Ameen, the Sudder dewanny adawlut held that the latter was bound to take the evidence *de novo*, instead of deciding upon the evidence taken by the Sudder Ameen.—*S. D. A. Sel. Rep. 24th March 1842, vol 6, p. 78.*

In a case transferred from the S. A. to the P. S. A., the latter must take the evidence *de novo*.

#### *Notice—Notification of the points at issue*

847. In the trial of original suits and appeals the Principal Sudder Ameens are enjoined to conform strictly to the mode of procedure directed to be observed by Section 10, Regulation 26, 1814 before any exhibits are filed or witnesses summoned in support of the allegations of either of the parties.—*Reg. 5, 1831, Sect. 21.*

Rules in sec 10, reg. 26, 1814 to be observed by P. S. A.

848. The Construction No. 859, having been under the consideration, of the Courts of Sudder dewanny adawlut for the Lower and North Western Provinces, is hereby rescinded, and it is hereby declared, in modification of Construction No. 1226, that Sections 10 and 12, Regulation 26, 1814, are applicable to the courts of the Principal Sudder Ameens and Sudder Ameens, but not to those of the Moonsiffs.—*Cu. Ord. 20th Aug 1841*

The rules of reg. 26, 1814, sec 10 & 12 are applicable to the courts of the P. S. A.

#### *Decrees.*

849. Decrees passed in the courts of the Principal Sudder Ameens shall be executed by those courts under the general rules prescribed for the execution of decrees passed by the zillah and city Judges—provided however, that in such cases an appeal from the orders of the Principal Sudder Ameens shall lie, in the first instance, to the zillah and city Judges, and specially to the Sudder dewanny adawlut.—*Reg. 5. 1831, Sect. 22.*

Decrees passed by the P. S. A., how to be executed.

850. The Moonsiffs will, as heretofore required to do, prepare and tender to the parties copies of each decree or final order which they may pass, within one week from the date thereof, the rule being equally applicable to Sudder Ameens and Principal Sudder Ameens, in suits referred to them under Section 5, Act XXV. of 1837 : in all other cases, the functionaries of the two latter grades are hereby required to have every decree and final order prepared within the same period.—*Civ. Ord. Cal. and West. C. 20th Sept. 1839, par. 7.*

The P. S. A. will prepare and tender to the parties copies of each decree or final order one week from its date

The P. S. A. will certify to the judge that every decree has been prepared within seven days.

851. With each monthly return the Principal Sudder Ameen will likewise furnish you with a certificate in Oordoo,\* (unless he happen to be acquainted with the English language when it shall be written in that tongue,) to the effect that all decrees exceeding rupees 5,000 passed by him in the month to which the statements relate, were prepared by him within seven days from the date of such decree. The abovementioned certificate you will then attach by a thread to statement No. 1, Part 1. and submit with your periodical papers for the information of the Court.—*Ibid.* par 11

The decrees of P. S. A. intended to remain with the record, must be written on Europe paper.

852. The printed Construction No. 1109 has ruled that the Circular order, dated 4th August, 1837, was only intended to apply to the Zillah and City courts, and that consequently the copies of decrees of Principal Sudder Ameens, Sudder Ameens and Moonsiffs, destined to remain with the records of suits, are not required to be written on paper of Europe manufacture. The Court having reconsidered that part of the Construction cited which concerns Principal Sudder Ameens, it has been resolved to modify the same so far as to extend the rule of the circular to that class of officers, and it is therefore enjoined, that decrees of the Principal Sudder Ameens which are intended to remain with the record, be in future engrossed on Europe paper.—*Cu. Ord.* 21st May 1841

#### *Confarment and Defendants.*

The P. S. A. may confine a defaulter without the sanction of the judge.

853. I am directed to inform you that in the opinion of the Court the proviso contained in Section 7, Regulation 7, 1832, was intended to apply to Principal Sudder Ameens and Moonsiffs, and that consequently the former are not competent to confine a defendant without the sanction of the Judge.—*Com.* 947, *West. C.* 1st, *Cal. C.* 22d May 1835.

The P. S. A. may order the imprisonment of a defendant in suits above 5,000 rs. The judge will order the jailor to receive or release him on the order of the P. S. A.

854. It has been ruled by a majority of the Allahabad and Calcutta Courts, that by Act XXV. 1837, the Principal Sudder Ameen has full power to pass any order connected with the case before him that the Judge himself could pass, subject to an appeal to the Sudder dewanny adawlut : he is therefore competent to order the imprisonment of a defendant in suits above rupees 5000 ; and it is not necessary that the Judge should have jurisdiction in the case to enable him to direct the civil jailor to take charge of the defendant or to release him on the requisition of the Principal Sudder Ameen, the Judge's duty, in such case, being merely to issue the warrant, the jailor to receive (or release,) the prisoner in the same way that he was required to give lodgment to prisoners under revenue process, before the issue of Circular order, No. 76, of the 4th January, 1833, which empowers Collectors to issue their own orders for the imprisonment and release of their own defaulting assamees. You are requested to make known the purport of this construction to the Principal Sudder Ameen of your district.—*Cu. Ord.* 18th Sept. 1840.

#### *Reports*

Reports to be furnished by the P. S. A.

855. The Principal Sudder Ameen shall furnish such monthly and other periodical reports of business done in their courts, as the Sudder dewanny adawlut may be pleased to direct.—*Reg.* 5, 1831, *Sect.* 23.

\* Bungalow in the Bengal districts and Oorya in Cuttack.

## SECTION LIII.

*Transmission of Reports and Records of decided Cases by Native Judges to the Zillah Courts.*

856. It shall be the duty of the Moonsiffs to transmit to the Judge on the fifteenth of each month, or as much sooner as may be practicable, a report of all the suits decided by them in the preceding month, drawn up according to the annexed form No. 5, of the Appendix. These reports shall be accompanied by all the original papers and documents in the case, that they may be deposited among the records of the court.—*Reg. 23, 1814, Sect. 43, Cl. 1.*

Monthly report of suits decided and proceedings on such suits to be transmitted to the judge.

857. The Moonsiffs shall likewise be required to transmit on the 15th of January and 15th of July of each year, or as much sooner as may be practicable, a report of the causes depending before them on the 1st of January and 1st of July, drawn out according to the annexed form No. 6, of the Appendix.—*Ibid. Cl. 2.*

Half-yearly report of depending suits to be transmitted to the judge according to a prescribed form.

858. The required monthly and half-yearly reports shall be enclosed in a cover addressed to the Judge, and sealed with the seal of the Moonsiff. The packet shall be forwarded to the Judge either by the public dawk, (the officers of which are hereby required to receive and convey such packets free of postage,) or by a servant of the Moonsiff, or the Moonsiff may deliver it to the nearest Police darogah who shall give a receipt for it, and convey it to the Judge. The Moonsiffs are directed to seal and fasten the public packets and reports which they may have occasion to transmit to the court, in such manner as may enable the court to detect any instance in which the packets may be opened or the seals broken, during their transmission to the court.—*Ibid. Cl. 3.*

Monthly and half-yearly reports how to be forwarded to the judge.

*These rules are made applicable to Sudder Ameens by Regulation 23, 1814, Section 73, and also to Principal Sudder Ameens by Regulation 5, 1831, Section 18, Clause 4.*

859. The Moonsiffs shall accompany the monthly reports required from them by Section 43, Regulation 23, 1814, with a statement of the suits instituted before them in the preceding month.—*Reg. 5, 1831, Sect. 10.*

Moonsiffs to furnish monthly statements of suits.

860. I am desirous to point out to you that the provisions of Clause 1, Section 43, Regulation 23, 1814, which require the transmission by the Moonsiffs, (and under Section 73 of the same law, by the Sudder Ameens, the rule applicable to whom is extended by Clause 4, Section 18, Regulation 5 of 1831, to Principal Sudder Ameens.) on or before the 15th of each month of reports of all suits decided by them in the preceding month, to the Judge, together with the original papers and documents in each case, for deposit among the records of his court, although the section itself has in fact been rescinded by Section 2, Regulation 7 of 1829,—are still, under Clause 2, Section 3 of the last mentioned enactment, in force, never having been specially dispensed with or ordered to be discontinued by the Court.—*Civ. Ord. Cal. and West. C. 20th Sept. 1839, par. 4.*

The unconv. judges are still required to transmit these reports of suits decided by them in the month, by the 15th of the next month to the judge, notwithstanding the repeal of the reg. ordering them

861. The Moonsiffs and Sudder Ameens will forward, along with their regular returns of business, the dispatch of which must be regulated with reference to the period within which, as

The same injunction repeated, P. S. A. will forward in like

manner reports and documents in suits not exceeding 5,000 rs.

declared in paragraph 4 of Circular orders, No. 28, dated 7th December last, you are yourself expected to submit your statements to this Court, viz. ten or at furthest fifteen days from the close of the month to which they relate, the same reports of suits decided, with the original papers and documents of each suit, (including of course the final decree,) as under Clause 1, Section 43, Regulation 23 of 1814, they were bound to do; and the same course will be followed by the Principal Sudder Ameen in so far as regards all suits not exceeding 5000 rupees in amount.—*Cir. Ord. Cal. and West. C. 20th Sept. 1839, par. 9.*

The uncov judges will also transmit the records of all cases of execution of decrees and miscellaneous cases of the preceding month

862 With the records of regular suits the Moonsiffs, Sudder Ameen, and Principal Sudder Ameen, will also transmit, for deposit, the records of all cases of execution of decrees and other miscellaneous cases that may have been disposed of in the preceding month, with exception to cases of enforcement of decrees, struck off the file in that period, in which an application may have been made, to sue out execution anew, prior to the date of transmission, in which event they will send, in lieu of the record, copies of the order striking the case off the file, of the petition for revival, and of the proceeding thereon.—*Ibid, par. 10.*

Exception

The judges will occasionally inspect these reports, especially the cases of execution of decrees struck off in default.

863. It is highly desirable that you should occasionally inspect the records of such cases, especially those which concern the execution of decrees that have been struck off in default with a view of satisfying yourself that no abuse or irregularity has been practised in so proceeding, and of taking proper steps to correct the same, if detected.—*Ibid, par. 11*

P. S. A. will retain the records of suits above 5,000 rs. in value for six months, & then forward them to the judge's office. The report of such cases will be forwarded monthly

864. As regards suits decided by the Principal Sudder Ameen, which exceed 5,000 rupees in value, the Court except them from the above rule, and direct that the records of such cases shall be retained by that officer for a period of six months, so as to enable him to execute any orders issued to him thereon by the Sudder dewanny adawlut, on occasion of appeals being preferred; after which they are to be forwarded for deposit in your office. The usual report, submitted monthly, will of course include these decisions also.—*Ibid, par. 13.*

Rules regarding the transmission of records of monthly decisions to the sudder station

865. The Court are pleased to issue the following remarks and orders, regarding the transmission, by the several subordinate courts, of the records of monthly decisions to the sudder station.—*Cir. Ord. 17th Jan. 1845, par. 1.*

Difficulty of transmitting these documents periodically by the occasional thannah dawk or police darogahs.

866. By Clause 8, Section 10, Regulation 20, 1817, Police darogahs are required to forward, by the thannah dawk, or by their burkundaues, as "*occasions may offer*," papers sent to them by the subordinate civil Judges for that purpose. On the other hand, the transmission of the records of monthly decisions is directed to be *periodically* made, and cannot, if the rules prescribed by Circular order, Sudder dewanny adawlut, No. 19, dated 20th September, 1839, are to be enforced, be allowed to depend on the *occasional* opportunity, which a Police darogah may think fit, either to improve, or on the other hand, to leave unheeded. Independently of this, the Court observe the increased bulk of the records of the subordinate tribunals, arising from the enlargement of their powers, and the consequent accession of judicial business, before them, opposes a serious obstacle to the employment of the thannah dawk as a means of conveying them to the sudder station.—*Ibid, par. 2.*

The uncov judges will send the monthly records to the nearest thannah for transmission to the sudder

867. The Court, however, are not disposed to dispense with the attendance of a Police burkundaue, which is authorized by law, and affords some security for the safe arrival of papers in transit; and they are pleased accordingly, with the permission of Government, to direct

that the subordinate judicial officers forward the records of monthly decisions by a specified date, to the nearest thannah, for transmission to the sudder station, taking a receipt from the darogah, or, in his absence, from the head officers present at the thannah. The judicial officers will provide the requisite coolies for the conveyance of the records, and indent on the Judge for the expence incurred thereby. It shall be the duty of the Police darogah to despatch the papers in question, without delay, to the sudder station, under charge of a burkundauze. A chellan, under the signature of the judicial officer exhibiting the date of transmission to the thannah, and the number of musls will accompany the records, and serve to show whether there has been any delay on the part of the Police in forwarding them to the sudder station.—*Ibid*, *iii* 3.

station. They will provide coolies, and the darogah, a burkundauze to accompany them.

868. The Judges are requested to determine the period, within which each Moonsiff shall be required to have his records of monthly decisions delivered to the Police darogah, with due advertence to the necessity of enforcing the provisions of Circular order, Sudder dewanny adawlut, No. 49, dated 20th September, 1839, and with reference to the distance of each receiving thannah from the sudder station.—*Ibid*, *par*. 4.

The judge will determine the period within which the M. must deliver his records of monthly decisions to the darogah

869. By Circular order, Sudder dewanny adawlut, No. 49, dated 20th September, 1839, paragraph 11 the Principal Sudder Ameens are permitted to retain in their own custody the records of suits, exceeding rupees 5,000 in value, for a period of six months from the date of their decision, in appeal in such cases lying direct to the Sudder dewanny adawlut, under the provisions of Section 4, Act XXV. of 1837. The considerations in which this order originated, equally indicate the expediency of a similar course being pursued in regard to the records of appeals, adjudicated by the Principal Sudder Ameens, agreeably to Section 16, Regulation 5, of 1831, since by Act III. of 1843, authority to hear and determine special appeals from their judgments passed in those cases, is restricted to the Sudder dewanny adawlut, and the Court are pleased accordingly to direct that henceforward the papers connected with cases of the latter description, shall be retained in the office of the Principal Sudder Ameens for six months, in case either of the parties should desire to present an application for the admission of a special appeal from their decision.—*Cir. Ord.* 15th May 1845.

The papers connected with appeals decided by the P S A. will also be retained in their office six months.

870. An instance of the destruction by fire, in the Goruckpore district, of the greater part of the records of pending suits in a Moonsiff's court having been the cause of much embarrassment and delay, the Court call the attention of the Judges to the importance of assigning a distinct place of deposit for the records of the subordinate courts, (which, under the rule requiring the monthly transmission of suits decided by them to the Judge's office, ought not to comprise more than the papers of cases under investigation,) with a view to their security from fire or other injury.—*Cir. Ord.* 18th Feb 1842.

The judges will assign a distinct place for the deposit of the records of the subordinate courts to secure them from fire and injury

871. The Court have reason to believe that it is the practice of Moonsiffs to deposit their records at the nearest thannahs when they are absent from their stations, during the vacations, or at any other time. As this is an objectionable practice, the Court are pleased to direct that, except at the vacations, Moonsiffs, who are about to avail themselves of leave of absence, will leave their records in the custody of their amlah; and that at the vacations when the amlahs are permitted to go to their homes, they will pack up the records in boxes sealing the boxes in the usual manner and placing a guard of peons over the catcherry during their absence.—*Cir. Ord.* 9th Jan. 1846.

Course to be pursued by the moonsiffs with their records when they are merely absent on leave, and when absent at the vacations.



## SECTION LIV.

*Criminal Jurisdiction of the Native Judges.*

Foregoing rules applicable to S. A. empowered under sec. 5, reg. 2, to try civil suits exceeding 150 rs., and to those appointed to the stations of joint magistrates.

872. The foregoing provisions (given below, Rules 873, 874 and 875,) are hereby declared to be equally applicable to any of the Sudder Ameeris, who may be empowered under Section 5. Regulation 2, 1821, to try civil suits exceeding in value or amount the sum of one hundred and fifty rupees, and likewise to all Sudder Ameeris whether vested with such powers or not, who may be appointed to the stations of the Joint Magistrates, and the latter officers are hereby authorized to employ such Sudder Ameeris in the manner above specified. —*Reg. 3, 1821, Sect. 4.*

Magistrates may refer petty complaints to their native law officers

873. The Zillah and City Magistrates are authorized to refer for trial to the Hindoo and Mahomedan Law officers of their respective courts, all complaints or charges brought before them for petty offences, such as abusive language, calumny, inconsiderable assaults or affrays, and all charges of petty thefts when unattended with any aggravating circumstances. —*Ibid, Sect. 3, Cl. 1.*

And also cases hitherto referable to assistants in the mode prescribed by the existing regulations.

874. The Magistrates of the Zillah and City courts shall be competent to refer to their Law officers any criminal cases, which they are already authorized by former Regulations to refer to their assistants, and in the mode of making the reference, and in the subsequent stages of the proceeding, the Magistrates and the Law officers shall be guided by the provisions hitherto in force relative to such cases. —*Ibid, Cl. 2.*

Such law officers empowered to exercise the powers vested in assistants to magistrates under the regulations in force

Exposition of the rules referred to in such case

875. The Law officers of the Zillah and City courts in the decision of criminal cases so referred to them, are hereby authorized to exercise the same powers as those vested in the assistants to the Magistrates, by Section 20, Regulation 9, 1807, and by the other Regulations therein referred to; that is, in cases referred to them for trial, they shall not sentence a person convicted of abusive language, or calumny, or inconsiderable assault or affray, to a more severe sentence than fifteen days' imprisonment, and a fine of fifty rupees with an eventual commutation, if the fine be not paid, to further confinement for fifteen days more, making the entire term of imprisonment, if the fine be not paid, one month of thirty days. Nor shall they sentence a person convicted of petty theft to a more severe corporal punishment than thirty lashes, and imprisonment for a period of one month. Persons sentenced to imprisonment by the Law officers shall not, during their imprisonment be confined in irons or in fetters, except in cases in which the misconduct of such individual, during his imprisonment shall appear to the Magistrate to render such measure necessary for his safe custody. —*Ibid, Cl. 3.*

*No officer under the grade of a Magistrate can now inflict corporal punishment.*

Repeals sec. 42; the further proviso in sec. 74, reg. 23, 1814, cl. 2 and 3, sec. 5 and 6, reg. 12, 1825.

876. It is hereby enacted, that Section 42; the further proviso contained in Section 74. Regulation 23, 1814; Clauses second and third, and Section 5 and Section 6. Regulation 12 of 1825, of the Bengal code, are repealed. —*Act XXX. 1841, Sect. 3.*

All persons using menacing gestures, &c or otherwise obstructing justice in the presence of any

877. Whereas sufficient provision is not made for repressing obstruction to justice committed in the courts of the East India Company; —It is hereby enacted, that all persons whatsoever, whether generally amenable to the courts of the East India Company or

otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any zillah or city Magistrate, Joint Magistrate, or other officer under a Magistrate empowered to try criminal cases, or any superior or inferior court, civil or criminal, of the East India Company, shall be liable to be fined by the authority whose proceedings are obstructed, to any amount not exceeding 200 rupees, or in case such fine be not paid to be imprisoned for any period not exceeding one month. Provided, that from the award of punishment in such cases an appeal shall lie, if preferred within one month, to the authority, civil or criminal, appointed by law to hear appeals in all other cases from the decisions of the officer by whom the fine was imposed; and provided also, that notwithstanding any thing in this Act it shall be lawful to indict any person amenable to Her Majesty's Supreme Courts as for a misdemeanor in any of the cases aforesaid sustainable before this Act, if no proceeding shall have been had against the offender in the court where the offence was committed, but not otherwise.—*Ibid*, Sect. 1.

878. A recent Circular, No. 3465, dated 16th September, 1842, having noticed to the judicial authorities that Act XXX 1841, is the only law under which contempt of court can now be punished, and "prevarication" not appearing to be correctly classable under the "obstructions to justice," rendered punishable by that enactment, it has accordingly been ruled by the Courts of Nizamut adawlut at Calcutta and Allahabad, that Construction No. 1177 must be held to be rescinded.—*Cir. Ord.* 3d Feb. 1843.

Prevarication not to be classed under obstructions to justice.

Con. 1177 rescinded

879. The Court of Nizamut adawlut have had before them your letter, dated the 27th ultimo, requesting to be informed, whether cases pending in the Criminal court, under Regulation 15, 1821, (Act 4, 1840,) may be referred for trial to a Sudder Ameen, vested with special powers, under Section 5, Regulation 2, 1821. In reply, I am desired to communicate to you the opinion of the Court, that cases of the nature specified are not properly cognizable by the officers in question.—*Con.* 415, 14th April 1826.

Cases under reg 15, 1821, (act 4, 1840,) may not be referred for trial to a S. A.

880. In cases referred for investigation and decision to the Sudder Ameens by the Magistrate, under the provisions of Section 4, Regulation 3, 1821, have the Sudder Ameens authority to issue perwannahs to the thannadars, police darogahs, or other mofassil Police officers?—In reply, I am desired to acquaint you, that the Court entirely coincide with you in opinion, that no power is vested by the Regulations in the Sudder Ameens, in any of the three mentioned cases, and that it is the duty of the Sudder Ameens, where the necessity may exist, to represent the matter to the Judge, Magistrate, or Additional Registrar, as the case may be, and that the order should issue from the superior court.—*Con.* 451, 30th March 1827.

S. A. cannot issue perwannahs to police officers, the order must issue through the superior court

881. As Sudder Ameens are to be guided, under Sections 3 and 4, Regulation 3, 1821, in criminal cases referred to them, by the rules prescribed for the guidance of assistants to Magistrates, the Court are of opinion that their processes in such cases should be issued under their own signatures, but under the seal and through the officers of the Magistrate.—*Con.* 741, Cal. C. 7th Dec. 1832, West. C. 11th Jan. 1833.

The processes of S. A. in criminal cases should issue under their own signatures, but under the seal and through the officers of the magistrates.

882. It may of course occasionally (though the Court would suppose rarely) happen, that a case, apparently trivial, may, on investigation, turn out to be of a serious nature; in which event it would be necessary for the Law officer, (or Native Judges) to whom the case had been sent for trial and decision, to return it to the Magistrate, unaccompanied however by any opinion as to the merits of the case; and the Court are, upon the whole, clearly of opinion that

The magistrate will refer to his law officer only cases of a trivial nature.

Mr. Smith's view of the existing rules on this subject is erroneous, and that the Magistrates are authorized to refer such cases only to their Law officers, as are of a trivial nature, and admit of their being finally disposed of by those officers.—*Con* 516, 24th July 1829.

A deposition taken on oath in the private dwelling of a S. A. is illegal, and the deponent cannot be punished for perjury

883. I beg the favor of the Court to decide whether a deposition taken on oath in the private dwelling of a Sudder Ameen, distant nearly three miles from the court-house, is legal evidence; and if so, whether a witness can be punished for perjury, in the event of it afterwards appearing that what he stated on oath in the dwelling house of the Sudder Ameen was false.—In reply to your first question, I am directed to observe that a deposition taken in the manner above stated is illegal, and cannot be received; consequently the deponent cannot be considered liable to the penalties of perjury if such deposition be false.—*Con* 627, 28th Feb 1831.

Law officers to furnish the Magistrate, with monthly statements of decisions passed by them

884. The Law officers of the Zillah and City courts shall forward to the Magistrates, on the fifth day of each month, a statement showing the manner in which the cases referred to them may have been disposed of, in order that the same after having been carefully inspected by the Magistrates, with the view of noticing and eventually correcting any irregularities, may be incorporated in the periodical reports required to be admitted to the superior courts.—*Reg* 3, 1821, *Sect* 3, *Ch* 4.

See 3, reg 3, declared applicable to P. S. A.

885. In addition to the rules contained in Section 3, Regulation 3, 1821, which are hereby declared applicable to the Principal Sudder Ameens appointed under this Regulation, it shall be competent to the Magistrate to refer to a Sudder Ameen or Principal Sudder Ameen, not being a Mahomedan Law officer, any criminal case for investigation though such case may not be finally cognizable by such Sudder Ameen, provided however, that no commitment be made by those officers, and that their powers of awarding punishment in criminal matters under the existing Regulations, be not exceeded.—*Reg* 5, 1831 *Sect* 18, *Ch* 6.

Additional powers to be exercised by the P. S. A. & S. A. in criminal matters

The Magistrate cannot refer cases under Act 1, 1819, to Sudder Ameens

886. The Court are of opinion that under Clause 6, Section 18, Regulation 5, 1833, which is adduced by the Magistrate as his authority for making the reference, he is not empowered to adopt this course in the disposal of cases, under Regulation 15, 1821 (Act IV, 1810); that section being intended to refer to cases of a strictly criminal nature.—*Con* 689, *West C* 27th April *Cal C* 18th May 1832

Cases under reg 7, 1819, may be referred to P. S. A.

887. Decided by the Government, in concurrence with the Western Court, that all cases under the provisions of Regulation 7, 1819, are referrible to the Principal Sudder Ameen for investigation and report.—*Con* 1265, *West C* 6th Dec 1839, *Cal C* 10th March 1840.

#### SECTION IV.

##### *Appeals from the Sentences and Orders passed by Native Judges in Criminal Cases*

Repeal of those parts of the Bengal code which concern the powers, &c. of criminal courts in respect to appeals, &c.

888. Those parts of the Bengal code which concern the powers and duties of the Criminal courts in respect to appeals and revision of sentences of a lower court by a higher, are repealed.—*Act* XXX. 1811, *Sect* 1.

From every sentence, &c. in criminal trials within sec. 8 &

889. And it is hereby enacted, that from every sentence or order in criminal trials within the limitation prescribed by Sections 8 and 9, Regulation 9, 1793; Section 4, Regu

lation 16, 1795, and Sections 8 and 9, Regulation 6, 1803, or in judicial proceedings other than criminal trials passed by an assistant to a Magistrate, or by a Sudder Ameen, or by a Law officer, or by any other officer under a Magistrate empowered to try criminal cases, there shall be permitted one appeal to the Magistrate, Joint Magistrate, or officer exercising the powers of Magistrate, within one month from the date of such sentence or order. And from every sentence or order in criminal trials beyond the limitation prescribed by Sections 8 and 9, Regulation 9, 1793, Section 1, Regulation 16, 1795, and Sections 8 and 9, Regulation 6, 1803, or in judicial proceedings other than criminal trials passed by a Magistrate, Joint Magistrate, Assistant to a Magistrate vested with special powers, or other officer empowered to try criminal cases, there shall be permitted within one month as aforesaid one appeal to the Sessions Judge. And from every sentence or order passed in criminal trials by a Sessions Judge, there shall be permitted within three months, one appeal to the Court of Nizamut Adawlut. And except as provided in the next section of this Act the sentences or orders passed upon such appeal, shall be final. —*Ibid.* Sect. 2

9, reg. 9, 1793; sec. 4, reg. 16, 1795; and sec. 8 & 9, reg. 6, 1803, or in judicial proceedings other than criminal trials passed by an assistant to a magistrate, a S. A., &c. or by any other inferior to a magistrate, there shall be one appeal to the magistrate, &c. within one month.

890. And it is hereby enacted, that it shall be at all times lawful for the Courts of Nizamut Adawlut to call for the records of any criminal trials of any subordinate court, and to pass upon them such orders as may seem fit. —*Ibid.* Sect. 3.

S. A. may call for the records of any criminal trials of any subordinate court, & pass upon them such orders as may seem fit.

891. Provided however, and it is hereby enacted that it shall not be lawful for the Court of Nizamut Adawlut in cases so called for, or for any Criminal court in appeals preferred to it, to enhance any punishment awarded, or to punish any person acquitted by the court below. —*Ibid.* Sect. 4

But may not enhance any punishment or punish persons acquitted.

892. And it is hereby enacted, that it shall be at all times lawful for a Sessions Judge and for a Magistrate, Joint Magistrate or officer exercising the powers of Magistrate, to call for and examine the records of any court immediately subordinate to their respective courts, for the purpose of satisfying themselves as to the regularity of the proceedings of such subordinate courts. But it shall not be lawful for any court under the decree of the Nizamut adawlut to alter any sentence or order of any subordinate court, except upon appeal by parties concerned, duly made according to the provisions of this Act. —*Ibid.* Sect. 5

Sessions judge, magistrate, joint magistrate, &c. may call for the records of any court subordinate to them, to examine as to regularity of their proceedings but not to alter, except upon appeal, any sentence or order, &c.

893. I am directed to draw your attention to the provisions of Act XXXI. of 1841 and to communicate to you the following observations on the subject of criminal appeals. —*Off. Ord.* 7th Jan. 1842, par. 1.

Observations on act 31 1841

894. You will observe first, that every order of an assistant to a Magistrate not exercising special powers, of a Principal Sudder Ameen, Sudder Ameen, or Law officer, passed in a criminal trial or proceeding, is appealable to the Magistrate or other officer exercising the power of Magistrate, whose decision on the appeal is final. —*Ibid.* par. 2

Every order of a P. S. A. or S. A. not appealable to the magistrate, whose decision is final

*The above rule is modified by the following Circular :*

895. The Courts of Nizamut adawlut for the Lower and Western Provinces, have ruled that every order of an assistant to a Magistrate not vested with special powers, of a Principal Sudder Ameen, Sudder Ameen, or Law officer, passed in a criminal trial, or proceeding awarding

Every order of a P. S. A. or S. A. awarding a higher punishment than that prescribed by reg. 9,

1793, sec. 8, is appealable to the sessions judge.

a higher punishment than that prescribed by Section 8, Regulation 9, 1793, is appealable to the Sessions Judge. The Circular order, No. 100, dated Lower Provinces, 7th, and Western Provinces, 18th January, 1842, is to be corrected accordingly.—*Cir. Ord. 9th Feb. 1844.*

A monthly statement of the appeals preferred from the sentences and orders of the P. S. A., S. A. and law officers to be forwarded to the S. N. A.

896. With reference to the foregoing remarks, (No. 894) the Court request that you will furnish the Sessions Judge with a monthly statement, (after the form of the statement No. 11 for the Sessions Judge's office\*) of the appeals preferred to you from the sentences and orders of the assistants, Principal Sudder Ameens, Sudder Ameens, and Law officers subordinate to you. The statement should accompany the rest of your monthly criminal statements.—*Cir. Ord. 7th Jan. 1842, par. 3.*

Every order of a P. S. A., S. A. and law officer awarding punishment within the limitations of act 31, 1841, sec. 2, is appealable to the magistrate.

897. The Courts of Nizamut adawlut for the Lower and Western Provinces, have ruled, in modification of the 3d rule of the Circular order, No. 100, (dated Lower Provinces, 7th, and Western Provinces, 25th January, 1842,) that every order of an assistant to a Magistrate Principal Sudder Ameen, Sudder Ameen, or Law officer, vested with special powers passed in a criminal trial or proceedings awarding a punishment within the limitations expressed in Section 2, Act XXXI. 1841, is appealable to the Magistrate.—*Cir. Ord. 25th July 1845.*

The sessions judge and the magistrates will report to the sudder, any cases the circumstances of which suggest the propriety of interference.

898. With reference to the provision in Section 5, Act XXXI. 1841, for the sessions and magisterial authorities being empowered to call for and examine the records of courts immediately subordinate to them, to satisfy themselves as to the proceedings of such courts being regular, but without power to *alter* any sentence or order of such courts, save on appeal regularly made under the Act, the Court notify that it is the duty of the authorities alluded to, to report any cases the circumstances of which, on revision, may suggest the propriety of interference, to the Nizamut adawlut, in order that that Court may proceed respecting them as shall appear proper.—*Cir. Ord. 18th March 1842, par. 1.*

Such reports will be accompanied by the record of the case to which the reference relates, and by an English letter. The magistrates will send the report through the sessions judge.

899. Such reports will always be accompanied by the record of the case to which the reference relates, and by an English letter commencing—"Under Section 5, Act XXXI. 1841, and Circular order of the Nizamut adawlut, dated 18th March, 1842, I herewith transmit the record of the case noted in the margin, to be laid before the Nizamut adawlut with the following report." Thereafter will follow a concise account of the irregularity, or other matter, on which the interference of the Court is sought. The magisterial authorities will send these reports, for submission to the Court, through the office of the Sessions Judge to whom they may be subordinate.—*Ibid, par. 2.*

Those officers will exercise a sound discretion in making references to the sudder under the foregoing rule.

900. In thus apprising the local officers of the duty devolving on them under the Act recited, the Court abstain from entering into any detail of the particular occasions on which such reports may require to be made, or attempting to define what descriptions of grave irregularity of procedure, undue severity of punishment, &c., may call for the adoption of the course. It is deemed sufficient to enjoin the officers in question, generally, to exercise a sound discretion in making references to the Court under this rule, so that neither important errors and omissions may escape correction, nor the time of the Court be needlessly engrossed by matters not demanding their interference.—*Ibid, par. 3.*

All criminal appeals pending at the date of act 31, 1841, must be disposed of in reference to the provisions of that act.

901. Held that all criminal appeals pending at the date of the promulgation of Act XXXI 1841, must be disposed of with reference to the provisions of that Act.—*Con. 1318, West. C. 28th Jan., Cal. C. 11th Feb. 1842.*

\* See Circular order, No. 6, dated 2d February, 1838. The heading of the 4th column should be "preferred during the month," and the note prescribed by paragraph 2 of the Circular order should be omitted.

902. Held on a reference from the Sessions Judge of Azimgurh, that the words "sentence or order" in Act XXXI. 1841, do not refer to interlocutory orders in cases under trial, and that the provisions of the Act do not preclude the interference of the higher, with such intermediate orders of the lower court.—*Con.* 1322, *West. C.* 18th March, *Cal. C.* 1st April 1842.

The words "sentence or order" in act 31, 1841, do not refer to the interlocutory orders of the lower courts.

903. Held, on a reference from the Sessions Judge of Sylhet, that appeals under Act XXXI. of 1841, are not admissible unless preferred within one month from the date of sentence or order, and that in this respect the law leaves no discretion to the appellate authority.—*Con.* 1332, *Cal. C.* 1st, *West. C.* 28th April 1842.

Appeals under act 31, 1841, must be preferred within one month from the date of the sentence or order.

904. A Sudder Ameen cannot appeal from the order of a Magistrate in a case originally investigated by the former, the right of appeal possessed by the party dissatisfied being sufficient for the ends of justice.—*Con.* 1185, *West. C.* 19th Oct., *Cal. C.* 19th Nov. 1838.

Sud. ameen cannot appeal from the order of a magistrate in a case originally investigated by the former.

## SECTION LVI.

### *Arbitration—Reference of Cases to Arbitration by the Courts*

905. In suits that may be brought before any of the Courts of civil judicature concerning disputed accounts, partnerships, debts, doubtful or contested bargains, or non-performance of contracts, in which the cause of action shall exceed two hundred sicca rupees, the courts are to recommend the parties to submit the decision of the matters in dispute to arbitration.—*Reg.* 16, 1793, *Sect.* 2 — *Benares Reg.* 15, 1795, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 21, 1803, *Sect.* 2

What suits exceeding 200 rs, the courts are to recommend to the parties to refer to arbitration

906. Held, that under the provisions of Section 2, Regulation 16, 1793, Principal Sudder Ameens are competent, with consent of parties, to refer suits to arbitration.—*Con.* 1292, *Cal. C.* 26th March, *West. C.* 10th April 1811.

P. S. A. may refer cases to arbitration

907. Held, that under the provisions of Section 2, Regulation 16, 1793, Sudder Ameens and Moonsiffs are competent, with consent of parties, to refer suits to arbitration.—*Con.* 1320, *Cal. C.* 11th Feb., *West. C.* 1st March 1812.

S. A. may refer cases to arbitration.

908. In all suits for money or personal property, the amount or value of which shall not exceed the sum of two hundred sicca rupees, the courts are empowered, with the consent of the parties, to refer the suit to the decision of one arbitrator. The parties or their vakeels, upon agreeing to the reference, shall on or before the next court day, mutually choose some one common friend or indifferent person who may be willing to undertake the arbitration. If the parties shall not agree with respect to the person to be appointed arbitrator, or, if the person nominated by them shall refuse to accept the arbitration, and the parties or their vakeels cannot agree in the appointment of another person willing to undertake the arbitration, the court, with the consent of the parties, is to appoint an arbitrator in the cause, the proprietor of the estate in which the cause of action shall have arisen, or the farmer, if the estate be held in farm of Government, or the casee of the purgunnah, or the tehsoldar, or any other creditable person, provided that the person so to be nominated by the court, be not in any respect interested in the matter in dispute. But if the parties cannot agree in the nomination of an arbitrator, or, if the per-

Cases in which the courts are empowered to nominate one person to arbitrate with the consent of the parties

son whom they may nominate, shall refuse to accept the trust, and the parties cannot agree upon the appointment of any other person willing to undertake the arbitration, or shall not consent to the appointment of an arbitrator by the court, the cause is not to be referred to arbitration, but is to be tried by the court, or the Register, if the cause be depending in a Zillah or City court, and the Judge shall think it proper to refer it to him for decision. In the event of the parties, or their vakeels, agreeing in the nomination of an arbitrator willing to accept the arbitration, or to an arbitrator being appointed by the court, the person so chosen or appointed, shall be the arbitrator in the cause. The parties however in suits of the nature of those described in this section, are to have the option of choosing two or more arbitrators to decide their cause in the same manner as the parties in the causes specified in Section 2.—*Reg. 16, 1793, Sect. 3* —*Benares Reg. 15, 1795 Sect. 2* — *Cod. and Cong. Prov. Reg. 21, 1803, Sect. 3.*

Parties to have the option of referring their causes to the decision of two or more arbitrators

A Judge cannot refer to a single arbitrator, a suit for money or personal property exceeding in value 200. This restriction applies also to summary suits, but not to cases under Reg. 6 1813, sec. 3

909 Under the provisions of Section 3, Regulation 16, 1793, a Judge is empowered to refer to a single arbitrator any suit for money or personal property, the amount or value of which may not exceed 200 rupees; suits exceeding that amount cannot be referred by the Judge to a single arbitrator. A doubt has arisen whether this restriction applies to summary suits for arrears of rent or merely to regular suits. The Court are of opinion that under the terms of the Regulation, which are general, the restriction must be construed to apply to suits of all descriptions. The Court observe that the above restriction is not intended to apply to suits referred to private arbitration by individuals under Section 3, Regulation 6, 1813.—*Con. 936, W. & C. 6th, Cal. C. 27th March 1835.*

Courts to encourage but not oblige persons to become arbitrators

When persons are disqualified from becoming arbitrators

Courts to recommend parties to submit to the arbitration of one person

Parties to choose the arbitrators. Exception

Arbitrators to decide without fee or reward

910. The Judges of the courts are enjoined to afford every encouragement in their power to persons of character and credit to become arbitrators, but they are not to employ any coercive means for that purpose, nor to permit any of their public officers, or private servants, or any of the authorized vakeels, to be arbitrators in a cause. In all cases, the courts are directed to endeavour, but without using any compulsion, to prevail upon parties to submit their cause to the arbitration of one person to be mutually agreed upon by them. In every case (with the exception of the cases specified in Section 3, which the courts are empowered to refer to one arbitrator with the consent of the parties) the parties are to choose the arbitrators, who are to decide the matter in dispute without fee or reward.—*Reg. 16, 1793, Sect. 4.* —*Benares Reg. 15, 1795 Sect. 2.*—*Cod. and Cong. Prov. Reg. 21, 1803, Sect. 4*

Explanation of the rules of arbitration, in cases under 200 the Judge may appoint the arbitrator; in cases above that amount the parties themselves must nominate the arbitrator

911. There appearing reason to believe that some of the Civil courts consider themselves precluded by the terms of Sections 3 and 4, Regulation 21 of 1803, [vide Rules 907 and 909 of this chapter] from referring suits of the nature of those described in Section 2 of that enactment to the arbitration of a single arbitrator, when the amount or value of the claim may exceed the sum of 200 rupees: I am directed to communicate to you the opinion of the Court that such was not the intention of those sections, the Civil courts being strictly enjoined in the latter section to endeavor in all cases to prevail upon parties to submit their cause to the arbitration of one person to be mutually agreed upon by them. The Court observe that where a reference to arbitration may be agreed to by the parties to a civil suit, the only difference that the Regulation in question makes between cases in which the amount or value of the claim

may not exceed 200 rupees, and those in which it may be above that sum, is that while in the former the Judge may, under certain circumstances, with the consent of the parties, appoint as arbitrator any of the individuals mentioned in Section 3 ; in the latter the parties are themselves to nominate the arbitrator, it not being competent to the Judge to interfere in any way whatever, either directly or indirectly, as respects such nomination. You are requested to act upon this construction in future, and to communicate it for the information and guidance of the subordinate judicial functionaries of your district.—*Civ. Ord. Cal. and West. C. 12th Oct. 1838.*

912. With reference to Section 4, Regulation 16, 1793, (Ceded and Conquered Provinces, Section 4, Regulation 21, 1803,) can a Sudder Ameen or a Law officer of a Zillah or City court legally become an arbitrator in a cause before the Judge, or in a cause pending before a superior court, in appeal from a decision of the zillah or city to which he may be attached?—The Presidency Court are of opinion, that a Sudder Ameen or Law officer is not a public officer of the Judge's court, coming within the prohibition contained in the section above referred to, that rule applying to ministerial officers, which a Sudder Ameen or Law officer cannot be considered to be.—*Civ. Ord. Cal. and West. C. 9th Nov. 1832.*

S A and law officers are not officers of the Judge's court, who are prohibited from becoming arbitrators.

913. The Courts of civil judicature are hereby empowered to permit any of the authorized valuers of their respective courts to be arbitrators in depending suits, subject to the several rules and provisions in force for referring suits to arbitration.—*Reg. 27. 1814, Sect. 19.*

Pleaders may be employed as arbitrators.

914. *Canongoes* cannot be compelled to attend *punchaets*, or act as arbitrators. When the nomination of an arbitrator may rest with the Civil courts, they should avoid as far as practicable the appointment of *canongoes*; and when such selection may be unavoidable, they should immediately notify the appointment to the Collector that he may provide for the due discharge of the duties of the office.—*Con. 286, 4th Feb. 1818.*

Canongoes cannot be compelled to act as arbitrators. Courts to be pursued when they are selected for that duty.

915. A *Cazee* and a *Sudder Ameen* are not public officers, whom the Zillah Judge, under Section 4, Regulation 16 of 1793, is not to permit to perform the office of arbitrator.—*S. D. A. Sel. Rep. 10th Jan. 1833, vol. 5, p. 261*

A *Cazee* and a S A may be appointed arbitrators.

916. Whenever a suit shall be submitted to arbitration, the court in which it may have been instituted, previous to the arbitrator or arbitrators entering upon the arbitration, is to cause the parties to execute arbitration bonds, binding themselves to abide by the award, and agreeing that it be made a decree of the court. The court is to fix such time as it may think reasonable, upon a consideration of the nature and circumstances of the case, for the delivery of the award, and the period so fixed is to be specified in the bonds. If the cause shall be referred to two or more arbitrators, the following provisions are to be made for completing the award in the event of the arbitrators not delivering it by the limited time, either from disagreement or other cause. If the decision of the suit shall be referred to two or more arbitrators, whether an odd or an even number, the parties are to have the option of nominating jointly one person as umpire, or, if the number of arbitrators appointed shall be three or more, being an odd number, to agree that the award given by the majority shall be final, or, to permit the arbitrators to nominate an umpire. The name of the umpire, and the time by which he is to make his award, in the event of the arbitrators not delivering it by the limited period, is to be specified in the bonds, which

Court how to proceed upon the parties agreeing to refer a cause to arbitration.

Provisions to be made against the arbitrators not delivering in their award by the limited time from disagreement, or other cause.



are to be executed before the arbitrators enter upon the enquiry. In the event of an umpire being appointed, and the arbitrators not agreeing in award by the limited period, their authority is to cease from such period, and the umpire is to give his award.—*Reg. 16, 1793, Sect. 5.—Benares Reg. 15, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 21, 1803, Sect. 5.*

Course to be pursued by the court previous to the arbitrator's entering upon his duty. Where these preliminary measures have not been taken, the case must be tried *de novo*.

917. I am desired to acquaint you, that whenever a suit shall be submitted to arbitration, the court in which it may have been instituted is required, previous to the arbitrator or arbitrators entering upon the arbitration, to cause the parties to agree to some one of the provisions detailed in Section 5, Regulation 16, 1793, for completing the award, in the event of the arbitrators not delivering it by the limited time, either from disagreement or other cause; and that where these preliminary engagements may not have been specified in the bond and the arbitrators may not be unanimous in their decision, their proceedings must of course be considered void and of no effect, and the case must be tried *de novo*, but I am desired to observe, that no difficulty can occur where the precautionary measures prescribed by the Regulation, as to the conditions of the bond, have been duly executed.—*Con. 395, 21th June 1825, par. 2.*

Courts now to proceed when the arbitration bonds have been executed

918. When a cause shall be referred to arbitration, and the bonds specified in the preceding section shall have been executed, the court is to transmit to the arbitrator or arbitrators a copy of the bill of complaint, and by a short writing under the seal of the court refer to him or them the matters in dispute between the parties. In the trial of the suit, the arbitrators are to investigate the matters in dispute, by hearing the pleadings of the parties, and examining their respective witnesses, and documents. The court is to issue the same process to the parties, and to the witnesses, whom the arbitrator or arbitrators, or the parties, may desire to have examined, to appear before the arbitrator or arbitrators, and to administer such oaths to the parties and witnesses as the court is authorized to administer, in causes tried before it, and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators during the investigation of the suit, are to be subject to the like disadvantages, penalties and punishments, by order made by the arbitrator or arbitrators, as they would incur for the same offences in suits tried before the court, provided that the arbitrator or arbitrators shall report the order with the reason for making it to the court, and obtain its consent thereto, which is to be signified by the Judge or Judges signing the order. In cases in which an arbitration may be held at a considerable distance from the court, the court may grant commissions to the arbitrators to administer the proper oaths to witnesses whom they may be desirous of examining upon oath.—*Reg. 16, 1793, Sect. 6.—Benares Reg. 15, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 21, 1803, Sect. 6.*

Cases in which the courts may extend the period for the delivery of an award.

919. In cases where arbitrators, or umpires, shall not have been able to complete the award by the limited time from want of the necessary evidence or information, or other good and sufficient cause, the courts are empowered to allow a further time for the delivery of the award. In the first mentioned case, the courts are to fix a period by which the umpire (if an umpire shall have been appointed) for the delivery of his final

award, in the event of the arbitrators not completing their award by the expiration of such further time.—*Reg. 16, 1793, Sect. 7.—Benares Reg. 15, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 21, 1803, Sect. 7.*

920. Held that in consequence of excessive delay in the disposal of a case by arbitrators, the Civil court was justified, under the circumstances, in refusing execution of the award.—*Rep. Sum. Cases, 15th Aug. 1842, p. 37.*

Excessive delay in the disposal of a case justifies a refusal to execute the award.

921. When a final award in a cause shall be made either by the arbitrators, or the umpire, it is to be submitted to the court under the seal and signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause. The court is to pass a decree conformably to the award, and the decree is to be carried into execution in the same manner as other decrees of the court.—*Reg. 16, 1793, Sect. 8.—Benares Reg. 15, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 21, 1803, Sect. 8.*

Arbitrators to deliver all documents and papers into the courts

Award to become a decree of the court

922. The award of an arbitrator or arbitrators, is not to be set aside, except it be fully proved to the satisfaction of the court by the oaths of two credible witnesses, that the arbitrator or arbitrators has or have been guilty of gross corruption or partiality in the cause in which the award may be made.—*Reg. 16, 1793, Sect. 9.—Benares Reg. 15, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 21, 1803, Sect. 9.*

Award not to be set aside but upon proof of corruption or partiality against the arbitrators.

923. It is not necessary to have corruption or partiality on the part of arbitrators proved by evidence, when it may be proved by the records of the case, as in the instance of contradictory awards by the same arbitrators.—*Rep. Sum. Cases, 18th Feb. 1845, p. 64.*

It is sufficient if corruption or partiality in the arbitrators be proved by the records of the case

924. Held by the Sudder dewanny adawlut that the award of arbitrators cannot be set aside, but, if it be not sufficiently specific, the matter may be referred back to them for their award to be amended.—*S. D. A. Sel. Rep. 28th Nov. 1844, vol. 7, p. 185.*

If the award be not sufficiently specific, the matter may be referred back to amend the award

925. Claim to set aside the award of arbitrators after a silence of ten years dismissed.—*S. D. A. Sel. Rep. 22d March 1825, vol. 1, p. 16.*

Claim to set aside the award after 10 years' silence dismissed.

## SECTION LVII.

### *Arbitration regarding Land -- Private Arbitration.*

926. Parties in suits depending in the Civil courts of judicature respecting the property in land, or limited tenures therein, or rights dependant thereon, shall be at liberty to refer their suits to arbitration and shall by all due means be encouraged by the courts to resort to that mode of adjusting their differences.—*Reg. 6, 1813, Sect. 2. Cl. 1*

Parties in suits respecting land, are at liberty to refer their suits to arbitration.

927. The rules contained in Regulation 16, 1793, and Regulation 21, 1803, respecting the reference of suits to arbitration the appointment of arbitrators and umpires, the investigation of suits referred to arbitration, the time and mode of making the award, and the setting aside or confirming the same, are declared applicable to suits referred to arbitration by the Courts of judicature under this Regulation.—*Ibid, Cl. 2.*

Rules contained in reg. 16, 1793, and reg. 21, 1803, to be considered applicable to suits referred to arbitration under the present regulation.

Persons between whom disputes may exist respecting land are at liberty to refer the same to private arbitration

928. Persons between whom disputes may exist respecting the property of land or limited tenures therein, or rights dependant thereon, whether the same be or be not depending in the Courts of judicature, are at liberty without any application to the courts, to refer the same to private arbitration; and the awards made by the arbitrators and umpires appointed in such case by the parties, shall be supported and enforced by the courts, under the following rules and limitations.—*Ibid*, Sect. 3, Cl. 1.

How the awards to be carried into execution and during what period

929. Whenever a dispute respecting the matters above enumerated shall have been referred to private arbitration, and an award shall have been duly made, if either party shall refuse to perform the award, it shall be competent to the other party within the period of six months from the date of the award, to apply summarily to the Dewanny adawlut; and upon such application, if the court, after calling upon the opposite party for his answer, be satisfied that the award was duly made by arbitrators or umpires appointed by the free will and consent of the parties, and such award shall be liable to no impeachment, which would have warranted the setting it aside if it had been made under the authority of the court, shall cause the same to be summarily executed as a decree of court calling upon the arbitrators and umpires, if necessary, to attend and give their assistance in the execution of their said award: provided always, that if such application for the enforcement of a private award shall not be made within the period above prescribed, the court shall not admit any plea whatever for the delay, but shall reject such application and refer the party preferring it to a regular suit.—*Ibid*, Cl. 2

Explanation of the mode in which the 6 months allowed for applying for the execution of the award is to be calculated

930. The following letter was addressed to the Judge of Nuddea in reply to a reference from that officer:—The Court having had before them your predecessor's letter, No. 216, of the 20th September last, direct me to observe, that the award in question being dated 28th December, 1810, the period of six months within which parties are required by Section 3, Regulation 6, 1813, to apply to the courts for enforcing such awards, did not expire till the 29th June, 1811. But as the 28th, the last day available to the petitioner in the present case, was a holiday, together with the following day, the 29th, the Court hold that it was allowable to him to present his application on the next first court day. In considering the question raised by the Judge of Nuddea, it was recognized as a general principle that a party under legal obligation to move a court within a given period may be allowed to postpone such motion to a day beyond the period, supposing the last day of the latter to be a Sunday or holiday.—*Con. 1312, Cal. C. 18th, West. C. 29th March 1812*

Further explanation of the subject

931. The Zillah court having been closed the last day allowed by the law for application to enforce an award of arbitration, the Sudder dewanny adawlut held that the applicant, in presenting his application on the next first court day, was in time.—*Rep. Sum. Cases, 10th May 1812, p. 31.*

Whenever private awards are tendered by the parties in regular suits, the courts have to proceed in those cases

932. Whenever private awards shall be tendered by the parties in regular suits, the courts, if such awards shall appear to have been performed, and the possession of the contested property to have been held under them, shall allow equal validity to the same, as if they had been made under the authority of the courts. But if the awards tendered shall not have been performed at all, or shall have been performed only in part, the courts shall not admit the same, unless they be established by clear and satisfac-

tory proof, shall be distinct and intelligible so as to admit of easy execution, and the delay which may have occurred in the performance of them shall also be duly accounted for.—*Reg. 6, 1813, Sect. 3, Cl. 3.*

933. The Court had on a former reference to them, determined that applications made to the Zillah or City courts for the execution of private awards under the second clause of Section 3, Regulation 6, 1813, are to be received and enforced under the rules applicable to summary process as directed in that clause.—*Cir. Ord. 24th Feb. 1816, par. 2.*

Application for executing private awards, are to be received and enforced under the rules applicable to summary process.

934. They are further of opinion, that such summary process is subsidiary to a regular suit, either in the Zillah or City court, or in the Provincial court, according to the value of the disputed property, calculated according to Section 14, Regulation 1, 1814, and Section 23, Regulation 26, 1814, [*now* Regulation 10, 1829.] But as it is evidently intended by the provisions of Section 3, Regulation 6, 1813, that the private awards therein mentioned, when summarily confirmed and enforced by a Zillah or City court, should have the same validity as if made under the authority of a Court of judicature, pursuant to the rules noticed in the preceding section, (*viz.* those contained in Regulation 16, 1793,) the Court are of opinion, that on trial of a regular suit or appeal, instituted by the party against whom the award may have been given, it should not be set aside, except it be fully proved to the satisfaction of the court, by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption or partiality," as expressly provided in Section 9, Regulation 16, 1793.—*Ibid, par. 3.*

Reasons on which alone an award is to be set aside on trial of a regular suit or appeal.

935. I am directed to state, that as no mention is made of arbitration bonds in Sections 2 and 3, Regulation 6, 1813, the Court are of opinion, that the mere circumstance of such bonds not having been executed, cannot of itself be held to bar the summary jurisdiction of the Civil courts, in cases referred to private arbitration under the provisions of those sections, but that if the reference of the case to arbitration be not denied, the Court should proceed summarily to enforce the award, subject of course to all the rules and limitations laid down in the enactment in question.—*Con. 1153, Cal and West C. 11th May 1838, par. 1.*

The mere circumstance of bonds not having been executed in cases of private arbitration does not bar the summary jurisdiction of the courts.

936. The Court of Sudder dewanny adawlut for the Lower Provinces, having reconsidered the terms of Sections 2 and 3, Regulation 6 of 1813, are pleased to rescind paragraph 2 of Construction No. 1153 and such part of Paragraph 1, likewise as rules, either directly or by implication, that when the agreement to abide by the award of arbitrators may be disputed, the summary jurisdiction of the Civil court is barred, and to notify that only so much of the Construction in question now remains in force, as declares the execution of written bonds of arbitration supererogatory under the provisions of Section 3, Regulation 6 of 1813.—*Cir. Ord. 14th Nov. 1845.*

The execution of written bonds in cases of private arbitration supererogatory.

937. The provisions of this Regulation, [*viz.* Regulation 16, 1793,] being extended generally to suits respecting property in land or limited tenures therein, by Regulation 6, 1813, the Court are of opinion, that under Section 2 of the latter Regulation, all suits of this description may be referred to arbitration for whatever amount.—*Con. 253, 7th Aug. 1816.*

All suits for land or limited tenures therein for whatever amount may be referred to arbitration.

938. The Court of Sudder dewanny adawlut have had before them your letter, dated the 8th instant, requesting the Court's opinion on a point connected with Regulation 6, 1813, the defendant in a civil process for the summary execution of an award of arbitration under the

Reg. 6, 1813, refers exclusively to suits regarding lands and is inapplicable to other matters.

provisions of Section 3 of the abovementioned Regulation, having put in a plea, that the provisions of the Section and Regulation above quoted exclusively provide for awards respecting lands and rights dependant on them, and that an award for debts, disputed accounts, and partnerships, &c. is not cognizable under that Regulation.—In reply, I am desired to communicate to you the opinion of the Court, that Regulation 6, 1813, as appears from its preamble, relates exclusively to contests and suits respecting lands, and is inapplicable to other matters.—*Con.* 172, 22d Feb 1828.

No former decree of court on awards of arbitration respecting land shall be amended or reversed after the promulgation of the present regulation

939. There being reason to believe that decrees have been passed by many of the Civil courts of judicature, founded both upon awards made under the authority of the court, and also private awards respecting the property in land and limited tenures therein and rights dependant thereon, it is hereby declared that after the promulgation of this Regulation, no decree relating to the matters above enumerated, shall be amended or reversed upon the ground of the same being founded on an award of arbitration not authorized by the Regulations, at the time the award was made unless such award be in itself open to just cause of impeachment. —*Reg.* 6, 1813, *Sect.* 4

Exception in what case

Magistrate, with consent of parties, may refer matters under act 4, 1810, to arbitration

940 And it is hereby enacted, that in cases instituted under this Act the Magistrate or other officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such Magistrate or other officer as aforesaid — *Act IV* 1810, *Sect.* 9.

The judge is not at liberty to refer a case of execution of an award from the civil to the criminal court

941. On the application of one of the parties to the Civil court, to cause execution of an arbitration award, the Judge is not authorized to refer the case from the Civil to the Criminal court. It was his duty as civil Judge to determine whether the award should be executed or not, without reference to a certain order of the Nizamut adawlut annulling certain orders of the Magistrate relating to the case, the said order not being held to affect orders passed by the Judge in the Civil court — *Con.* 609, 18th Nov 1831.

A particular objection to an award of arbitration overruled

942 An objection having been raised to an award of arbitration, to the effect, that one of the two arbitrators had not accompanied the other to the disputed lands for the purpose of local investigation, the objection was overruled, and the decision of the arbitrators upheld.—*S. D. A. Sel. Rep* 5th Feb. 1836. vol 6, p 51

Particular case of arbitration decided by the S D A

943 The appellant, a Hindoo woman, who had embraced the Mahomedan faith, sued her husband to recover property which devolved on her at the death of her parents. A *punchet* decided that she [previous to her apostacy] had forfeited her claim to the property in question by her profligacy. The award was upheld and his claim dismissed.—*S. D. A. Sel. Rep* 1st April 1818, vol. 2, p. 257.

Idem

944. A., a Hindoo, repudiated a settlement made by his elder brother of estates therein alleged to be the sole acquisition of B, by which a quarter was allotted to him, and sought to recover a moiety of a part by title of community. Pending litigation an award of arbitration under bond of submission was passed in conformity with the deed : and a compromise was had in pursuance of which A. signed a retraction, which he subsequently denied and failed to file in court. His claim to half by title of community was disallowed, but he obtained a decree for a quarter on the deed, and in a later suit brought by A. against the heirs of B. it was held that

the judgment of the court must be ruled by the prior decision, and that A. should recover quarter share under the deed of compromise, his repudiation and denial notwithstanding.— *S. D. A. Sel. Rep. 18th April 1832, vol. 5, p. 187.*

945. Where arbitrators had made an extra judicial award of partition amongst brothers, one of the brothers receded from it, and the others in suing claimed their full legal right according to their allegation as to facts. Defendant did not claim benefit of the award ; but the Sudder dewanny adawlut adopted the partition proposed by the arbitrators as equitable ; and disregarded the rest of the awards.— *S. D. A. Sel. Rep. 31st Dec. 1833, vol. 5, p. 335.* Decision of the S. D. A. in a case of arbitration.

946 A., by receding from an award made by arbitrators on his contest with B., to which both at first assented, compelled B. to sue for his legal claim. A. defended and B. was nonsuited for some informality, by the lower court, and instead of appealing sued *de novo*. The second suit is tried on special appeal by the Sudder dewanny adawlut, which decreed the right of B. to be according to the award as to part, and more than the award as to part.—*Ibid.* Idem.

## SECTION LVIII.

### *Orders in Miscellaneous Cases and Registry of Interlocutory Orders passed in Suits.*

947 The Zillah Judges, the Principal Sudder Ameen, the Sudder Ameen, and the Moonseefs are hereby severally directed to have each a book, to be called the "Buhee Yaddash" prepared, the pages of which are to be numbered, and every leaf attested by the signature of the Munsifdar, pushkar, or other superior ministerial officer of the court — *En. Ord. Cal. and West. C. 15th May 1835 par. 2.* The zillah judges and the moonseef judges are each one to prepare a book to be called the "buhee yaddash."

948 The first and last leaves of this book are to be signed by the Judge, Principal Sudder Ameen, Sudder Ameen, or Moonseef, as the case may be, who is then con to specify the number of pages which the said book contains. Into the book thus prepared, every order, final or interlocutory, on every regular suit or appeal is to be briefly entered as soon as it is passed, and the Judge Principal Sudder Ameen, Sudder Ameen or Moonseef is to sign the same before he leaves his court. When the order is one finally disposing of a suit or appeal, the vakel or vakels of the party or parties are to attest the said entry by their signatures — *Ibid, par. 3.* Mode of paging the book Every order, final, or interlocutory, will be entered in it, and signed by the judges. If the order be a final one, the vakels will attest it by their signature.

949 It is not required that orders on miscellaneous petitions should be thus entered, though it would be better that this should be done, if not attended with embarrassment ; but the Court do not exact this of the inferior tribunals, because they are anxious to render the present order so simple, that no difficulty whatever may attend its observance, upon which they feel incumbent on them to insist. It is also to be understood that it is merely the order passed, and not the reasons for it, that are required to be entered. These latter, demanding time and deliberation, cannot, the Court are well aware, always be put down at the instant ; but there can never be any thing to prevent every officer from recording, without delay, whether a case is decided in favor of the plaintiff or defendant ; whether a decision in appeal is to be confirmed, amended, or reversed ; and whether decision is postponed for the appearance of witnesses the production of documents, or any other cause. The books in question are, when completed and filled up, to be deposited by all the judicial authorities subordinate to the zillah Judge in the record office of the district, and the record-keeper is to grant a receipt for the same on

their being so deposited. It is discretionary with the zillah Judge to entrust the books for his own office to any officer on his establishment, or to deposit them with the record-keeper, as he may deem best ; provided that the books shall be forthcoming should their production ever be required, and that on quitting his office, he shall be bound to hand them over to his successor.—*Ibid*, par. 4.

Heading of all orders issued by all judges

950. The Court are pleased to direct that all Judges, covenanted and uncovenanted, shall invariably head all orders passed by them, where no formal roobukaree is written, in the following manner :—

বৈঠক জীয়াত অমুক জজ সাহেব বা প্রথম প্রধান সদর আমীন কি দ্বিতীয় প্রধান সদর আমীন বা সদর আমীন কি হুন্সেফ অমুক জিলা বুকুম ডারিগ মসদুক।—*Cir. Ord. 19th May 1843*

Mode in which the judges and P. S. A. will head their orders

951. The Court request, that in passing orders in all miscellaneous cases coming under any particular Act or Regulation, the case be designated on the face of the roobukaree, thus—“ Samsree Moemlunch Act Ye Khou tulana, sun tulana ke.” The same rule will be observed by Principal Sudder Amcees—*Cir. Ord. 29th Dec. 1843*

## SECTION LIX

### *Applications for Copies of Papers or Orders to the Civil Courts and taking Copies*

All persons interested in cases pending on, or decided by the civil courts, are entitled to an authenticated copy of the orders issued, on their furnishing stamped paper

952. The Court of Sudder dewanny adawlut are of opinion, that under the rule prescribed for the several Civil courts, which directs that a copy of the order passed upon any representation made in writing to the court, “ be delivered to the person making the representation, or to his vakel, under the seal of the court, and attested by the Register,” all persons interested in cases depending before, or decided by, the Civil courts, are entitled to receive authenticated copies of any orders passed in such cases, on furnishing the stamped paper required by Section 19, Regulation 1, 1814, (*now* Regulation 10, 1829.)—*Cir. Ord. 11th May 1818, par. 2.*

The civil courts will exercise their own discretion in giving, or refusing, copies of proceedings or documents not adverted to above, in which the regulations do not expressly direct to be delivered.

953. With respect to applications for copies of proceedings and documents, not falling within the rule adverted to in the second paragraph of this letter, and for the delivery of which no express provision has been made by the Regulations in force, the Courts of Sudder dewanny and Nizamat adawluts are of opinion, that the Provincial courts of appeal and circuit, and the zillah and city Judges and Magistrates must be considered to possess a discretion, either to comply with applications for copies, on sufficient cause being stated for granting them on stamped paper, or for allowing them to be taken on any paper, in pursuance of the fourth clause of Section 16, Regulation 26, 1814, or to refuse compliance when satisfactory cause may not be assigned for granting a copy, or allowing it to be taken, especially when the application may be from a person not a party, or immediately interested in the case.—*Ibid*, par. 4.

Applications for copies in cases before the native judges, must be made to them, and they will comply with, or reject, such applications, but the copies they

954. Applications for copies shall be made to the Native Judges in whose courts the suits in which the papers were filed may be pending ; and those officers shall decide on the propriety of complying with or rejecting such applications, on their own authority, and shall themselves authenticate the copies which they see fit to grant. The Court observe, however, that as regards final orders in miscellaneous cases, as well as all interlocutory orders, no option is possessed by

those tribunals of rejecting the applications for copies which parties may desire to obtain, and to which they are entitled, from the Moonsiffs on plain paper and from the courts of the other Native Judges upon the prescribed stamp.—*Cir. Ord. Cal. C. 15th Nov. 1839, West. C. 16th Jan. 1840, par. 2.*

give must be authenticated. Copies of final orders in miscellaneous cases and of interlocutory orders, they must give

955. There being reason to believe that specifications of additional documents are sometimes inserted in applications for copies of papers, after the presentation of the application and the passing of an order for granting copies of the papers originally applied for, the Court, with a view to prevent such a practice, direct that petitioners be in future required to mention in words the number of documents of which transcripts are required and to insert the date of application immediately after the list of papers.—*Cir. Ord. 7th April 1843.*

Applicants will mention in words the number of documents of which they require copies, and will specify the date of their application.

956. The Court request that, whenever applications are made to you for copies of any letters from, or resolutions passed by them, you will refer the applicants to the Court, instead of granting the copies asked for.—*Cir. Ord. 19th April 1844, par. 1*

Applications for copies of letters from, or resolutions passed by, the S D A must be referred to that court

957. When the records of its decided by the Native Judges have been transmitted, in the prescribed manner, to the Judge's office, applications shall be presented to and disposed of by the Judge.—*Cir. Ord. Cal. C. 15th Nov. 1839, West. C. 16th Jan. 1840, par. 3.*

When the records of cases decided by the munsif judge have been sent to the judge's office, application for copies must be made to him

958. With a view to uniformity of practice, the Court are pleased to resolve that henceforward the authorized rate of remuneration to copyists of papers in the Persian, Oordoo, or Bengalee language, in your court, to which parties are not entitled free of charge shall be a rupee for 4,000 words, correctly written in a clear and legible hand, figures counting as words; which is the same as the rate recently sanctioned by the Government for paying temporary mohurrirs employed to copy the proceedings of cases appealed direct to the Sudder dewanny adawlut from the Principal Sudder Ameer's courts.—*Cir. Ord. 4th Sept. 1840.*

Authorized rate of remuneration for copying papers in the native languages.

959. The principles contained in clauses eight, ninth and tenth of this section, are to be considered applicable to all copies of decrees, from which a party may be desirous of preferring a special or a summary appeal, and to all copies of orders passed by the Judges and Registers of the Zillah and City courts, by the Provincial courts, and by the Sudder dewanny adawlut, which those courts may be required to furnish to parties under the provisions of any Regulation.—*Reg. 26, 1814, Sect. 8, Cl. 11.*

The provisions of the three preceding clauses applicable to copies of decrees or orders from which a party may desire to prefer a special, or a summary appeal

960. The revenue authorities cannot demand that the records of the Civil courts be sent to them for inspection.—*Con. 693, 18th May 1832.*

The revenue authorities cannot demand that the records of civil courts be sent to them

961. The prohibition contained in Section 2, Regulation 8, 1825, against the employment of other than the duly constituted officers of the Court, need not be construed to preclude other persons than the regularly appointed officers of the court from taking copies of public documents, with the sanction of the Judge or Magistrate, for the use of private individuals, at the expence of those who may employ them.—*Con. 407, 11th Nov. 1825.*

Others than the regular officers of the courts may be employed in taking copies of public documents for the use of private individuals

962. Clause 4, Section 16, Regulation 26, 1814, not having been rescinded by Regulation 16, 1824, private persons may be allowed to take copies of public papers for their own use, at their own expence, on any paper they please.—*Con. 408, 2d Dec. 1825.*

Private persons may take copies of public papers for their own use at their own expence on plain paper



## SECTION I.X.

*Records of the Zillah and City Courts.*

Two native keepers of the record to be appointed to keep the records of the civil and criminal courts.

963. Two Native keepers of the records shall be appointed to keep the dewanny adawlut and foudgarry records in each zillah, and each of the cities of Patna, Dacca, and Moonshedabad, and in each of the Provincial courts of appeal and Courts of circuit, and in the Sudder dewanny adawlut and the Nizamut adawlut --*Reg. 18, 1793, Sect. 2.*

*Record-keepers come under the denomination of ministerial officers of the Native courts, and their removal and appointment follow the same rules.*

The record-keepers will keep a list of the records in a book, pagged and attested as herein directed.

964. The keepers of the records are to keep a register, in the Persian and Bengal languages in Bengal and Orissa, and in the Persian language in Behar, of all the dewanny and foudgarry proceedings, documents, and other records belonging to the courts to which they may respectively be attached in a book, each leaf of which shall be attested by the official signature of the Register, and assistant to the Judges and Magistrates of the zillahs and cities, and the Registers to the Provincial courts of appeal and the Courts of circuit, and the Sudder dewanny adawlut and the Nizamut adawlut, and on the last leaf of which they shall specify in their own handwriting the number of pages contained in the book. The existing records are to be first registered, and the keepers of records are to prepare a list of them immediately upon the receipt of this Regulation. --*Reg. 18, 1793 Sect. 4.*

Registers to be immediately commenced by the mohurrir, engaged in every suit to keep up the records.

965. The Government having been pleased to authorize the entertainment of a mohurrir in every zillah, on a salary of 12 rupees per month, to be employed exclusively in keeping up the registers prescribed by Section 4, Regulation 18, 1793, I am directed by the Court to request that you will cause the following registers to be immediately commenced upon, in the language now in use in your court. No. 1, Register of civil suits disposed of by the Judge, Additional Judge, Principal Sudder Ameen, and Sudder Ameen of zillah ----- in the year 183—, and deposited in the records of the court of that district, as per annexed form. No. 2, A similar register of suits disposed of by Moonsiffs. No. 3, Books containing the usual list of papers comprising the record of cases disposed of by the Judge, Additional Judge, Principal Sudder Ameen, and Sudder Ameen of zillah ----- for 183—. No. 4, Similar books for the cases disposed of by the Moonsiffs.—*C.r. Ord. Cal. C. 10th Aug, West. C. 23d Nov 1838, par. 1.*

Entries to be made in the first two register books.

966. The first two register books will be kept up, under the immediate orders of the record keeper, by the mohurrir specially appointed for the purpose. In them will be entered all regular suits disposed of by the Judge and the subordinate judicial officers, whether decided on their merits or otherwise. In entering in the proper column the final order in each case the record-keeper must be directed to state the nature of that final order, that is, in cases dismissed or decreed for the whole claim to enter merely the word dismissed or decreed, but where the decree affects only a part of the matter or thing in dispute to record the substance of such order.—*Ibid, par. 2.*

Form of Register Book No. 1.—Register of Civil Suits, disposed of by the Judge, Additional Judge, Principal Sudder Ameen and Sudder Ameen of Zillah ——— in the year 183—, and deposited among the Records of the Court of that District. Form of register book No. 1.

No. of Register.	No. and nature of suit.	Names of parties.	Substance of petition of plaintiff or appeal.	Date of filing petition of plaintiff or appeal.	Date and substance of final order, and by whom passed.	Actual number of papers comprising the record of the case.	Remarks.
321.	Original Suit.	Raj Kishore Choudhary plaintiff vs. Hare Kishore defendant.	For possession of ratoon Ry. damaged suit land at Rs. 5,000, three times the seedling jamma.	1st July 1845.	Decree by A. B. Esquire Judge, in favour of the plaintiff, on the 2d Jan. 1847.	Fifty-one, as per list in page 1, book No. 3.	The papers were forwarded to the Collector on 10th May 1846, as requested by his order of 1st May 1847. Returned back from Collector on 14th August 1847. Transmitted to the Court of Sudder Diwanee Adalat on 1st Nov. 1847.
405.	Appeal.	Appelant, by respondent.	To set aside the decision of Modyce, Principal Sudder Ameen, dated.	7th March 1846.	Appeal dismissed and the decision of P. S. A. confirmed by Judge on 3d Jan. 1847.	Sixteen as per list in page 1, book No. 4.	

No. 2 The same as above for the Moonsiffs.

967. The books (Nos. 3 and 4,) which are to contain a list of the papers composing each case, are to be kept up in the courts to which they severally belong. The lower courts will forward to the Judge, at the end of every month, the original records of all cases disposed of within the month, for the purpose of being placed in his record office, and will accompany each case with a list, taken from those books, specifying the nature of the papers comprising the suit. The Judge's amlah, after comparing such list with the original suit and finding the two to correspond, will immediately fill up column No. 7 of the registers Nos. 1 and 2. The labour of compiling the books in question, which will be entailed on the establishment of the lower courts, is not more than, with the recent addition to their allowances, they may fairly be expected to undertake.—*Ibid*, par. 3.

Contents of books Nos. 3 and 4. The lower courts will forward monthly to the Judge the original records of cases disposed of, and a list of them. The Judge's amlah, after comparing them, will fill up column 7, of the registers Nos. 1 and 2.

968. In those districts in which the registers have been allowed to fall into arrears or have been totally neglected, the Court expect the Judges will avail themselves, as far as possible, of their regular establishments to supply in an abstract form the information for past years which ought to have been entered in the neglected registers.—*Ibid*, par. 4.

When the registers have fallen into arrears or have been totally neglected, the regular establishments of the courts will furnish an abstract of the information for past years.

969. The keepers of the records are to endorse upon the back of every paper or document which they may enter in the register, the number of the page in which it may be registered, and the endorsement is to be attested with the official signature of both or either of them.—*Reg. 18, 1793, Sect. 5.*

Number of the page in which papers are registered, to be endorsed.

970. It shall be the duty of the keepers of the records to see that the records of the court are not destroyed by insects, damp, or otherwise, and that they are not removed without the orders of the court.—*Ibid*, Sect. 6.

Keepers of the records to be careful that papers are not destroyed by damp or otherwise.

971. If any records entered in the register shall be destroyed in consequence of the neglect or any omission of the keepers of the records, or if any such records shall not be

To be liable to dismission if papers are destroyed by their

neglect, or shall not be forthcoming, and they shall not be able to give a satisfactory account of them

Any officer who permits the records of his office to fall into disorder, will pay for their re-adjustment. Any officer receiving charge of an office, when the records are in confusion, who does not report it immediately, will pay for their re-arrangement

forthcoming, and they shall not be able to give a satisfactory account of them, they shall be liable to dismissal from their offices.—*Ibid*, Sect. 7.

972. With the sanction of Government, it is notified, for the information and guidance of all public officers at the head of establishments containing records, that in future, any officer who permits the records of his office to fall into disorder shall be held responsible to Government for the expences incurred in their re-adjustment, and any functionary receiving charge of an office, the records of which may be in disorder, or so immethodeally arranged as to prevent the ready production of papers when called for, who shall fail to make a timely report of their state, will be similarly held answerable for the outlay attending the assortment of the records.—*Cn Ord*, 4th Nov. 1842.

Recapitulation of this order

973. The Circular order of this Court, No. 232, dated 1th November, 1842, declares, "that any officer who permits the records of his office to fall into disorder, shall be held responsible to Government for the expences incurred in their re-adjustment" and, further, that any functionary receiving charge of an office, the records of which may be in disorder, who shall fail to make a timely report of their state, will be similarly held answerable for the outlay attending their assortment and arrangement —*Cn Ord*, 23d Jan. 1845, *par*. 1

In many districts the judicial records have been methodically arranged, and the department is efficient

974. It is known, that in many districts a considerable expenditure has been incurred in the methodical adjustment of the judicial records, and it is believed that in the majority of others, the record department has been brought into a state of practical efficiency and order by the personal assiduity of the Judges, and the unassisted efforts of their ministerial establishment, acting under their supervising direction —*Ibid*, *par*. 2.

To maintain this efficiency, and to detect delinquency, the judges will annually notice the condition of their record department mentioning any defects, and the measures taken to remedy them

975. With the object of securing the maintenance of this efficiency in those offices where it has been attained, as well as of ascertaining the existence of disorder or immethodeal arrangement of the records in others and enforcing with regard to them the responsibility above declared to rest on those functionaries, who may have permitted such disorder to supervene, the Court are pleased to direct that the several civil Judges will include in their annual reports on the administration of civil justice for the past and all subsequent years, a brief notice of the condition of the record department of their respective offices, after personal ascertainment thereof, mentioning any defects that may have been detected, the causes to which their existence may be ascribable, and the measures that may have been taken for their immediate correction —*Ibid*, *par*. 3

Contents of the first report after this order, and of subsequent reports.

976. In the first report, submitted agreeably to this order, the Court will expect to find the system, followed in the arrangement of the records described, and the outlay incurred in its completion, as well as the period thereof specified. In subsequent reports a reference to these details, and a brief notice of any changes or improvements, that may have been introduced within the period embraced in such reports, will sufficiently answer all the purposes contemplated by the Court in issuing these instructions —*Ibid*, *par*. 4.

The record-keepers will observe any rules prescribed to them by any regulation printed and published in the manner directed by reg. 41, 1793.

977. The keepers of the records are to be careful to attend to any rules or orders respecting the duties of their office, that may be prescribed to them by any Regulation, printed and published in the manner directed by Regulation 41, 1793, and also to any directions that may be given to them by the court to which they may be attached, or the Register thereof, for the better keeping, preserving or registering the records.—*Reg*. 18, 1793, Sect. 8.

978. The Courts of Dewanny adawlut established in the several zillahs, and at the cities of Patna, Dacca and Moorshedabad, are to keep a book in which the daily proceedings in each cause, and every order or act of the court, are to be minuted in the Persian or Bengal language in Bengal and Orissa, or in the Persian language, or the Hindoostanee language and Nagree character in Behar, and attested with the signature of the Judge. The plaint, answer, reply, and rejoinder of the parties, and every deposition, exhibit, and paper whatever, read and filed in each cause, is to be minuted and referred to in this book, by marks or numbers, corresponding to marks or numbers, to be endorsed on each document when it may be read in the cause — *Ibid*, Sect. 9.

Book of daily proceedings to be kept in each zillah and city court.

Entries to be made in it

979. I am directed by the Court to acknowledge the receipt of your letter of the 3d instant, forwarding copy of one from the Secretary to the Board of Revenue, and requesting the Court to state what objection they perceive to permitting the Board of Revenue to procure from the established Courts of justice their original records for inspection. The Court direct me to observe, that the measure appears to them open to the following objections: 1st, the permission, if granted to all parties, would be attended with much risk of the records being fraudulently altered or lost; 2ndly, it would be attended with inconvenience, from the records not being at hand, when a reference to them might be necessary; and 3rdly, if it could not be granted to all parties, it would be wrong to grant it to any, more especially to the conductors of Government suits, as it behoves the Courts of justice to guard against the possibility of affording ground for suspicion that they might be influenced by the Government in allowing an indulgence to them, which would not be allowed to their opponents — *Civ. Ord. Cal. and West C. 28th Dec. 1832, par. 2.*

Objections to permitting the B. of Revenue to procure original records from the civil courts

980. The Court further observe that there exists in their opinion no necessity for deviating in favor of the revenue authorities, from the general rule of practice. They are not aware that the Superintendent of Legal Affairs ever claimed to be furnished with original records of the Civil courts, though he may have been allowed to inspect them in the court-house, within his reach, in common with other individuals. The same thing could be done by the Board, the Commissioners of Revenue, and other officers conducting public suits, through the agency of their assistants or amilah, and they could obtain through their vakeels on unstamped paper, in the same manner as the parties in private suits and their agents do, copies of all documents or papers they may wish to refer to, at the trifling expence of having them transcribed — *Ibid*, par. 3.

There is no necessity for deviating from this rule of practice in favor of the board, as they may easily obtain copies of all documents or papers they wish, at little expence.

981. I am directed to communicate to you, in reply to your letter of the 26th December last, the opinion of the Court that you ought not, in ordinary cases, to furnish the officers employed in the resumption department with the original records of your court, but that you should inform the Special Commissioner and Deputy Collector that you will furnish them with copies of any papers that they may require, on their authorizing you to defray the expence of transcribing them. Should an inspection of the original records, or any papers filed therein, be indispensably necessary, you will then, previous to forwarding the same, retain an attested copy, the expence of making which must be defrayed by the revenue authorities — *Con. 1070, Cal. C. 27th Jan., West. C. 10th Feb. 1837.*

The original records of the civil courts not to be furnished to officers in the resumption department, they may obtain copies. When the originals are indispensable, copies of them must be made at the expence of the revenue authorities before they leave the court.

982. I am directed to transmit to you the accompanying copy of correspondence as per margin, on the subject of arranging the records of the Civil courts, and to request that you will

Plan proposed by the judge of Cuttack for arranging the records.

take measures for giving immediate effect to the plan laid down in the extract from the letter of the Judge of Cuttack.—*Cir. Ord.* 18th June 1841, *par.* 1.

Plan proposed by the Judge of Cuttack for arranging the records

983. *Extract from a letter from the Judge of Cuttack to the Court, No. 223, dated 21st December, 1839.*—The object in arranging voluminous records both of cases decided (but to which occasional reference is required) and of cases pending, appertaining to several courts is apparently twofold, viz. preservation and facility of reference.—*Ibid*, *par.* 2.

1841

984. The system of arrangement ultimately adopted by the Judge of Allahabad appears for the most part unobjectionable; but I am of opinion that with reference to the various forms of record rooms, and shapes of ranks, in different zillahs, no fixed rules for the disposition of records can be laid down. If functionaries will only see that the record-keeper keeps the papers of each jurisdiction separate, subdividing them again according to departments or rather description of cases, and arranging them by years and months, (each bustah containing the produce of one month carefully docketed outside) no difficulty can occur.—*Ibid*, *par.* 4.

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985. In regard to case spending, it is the practice in this office, and I think unobjectionable, that during the day they remain in charge of the officer of the department until disposed of, and at night are placed in the record office for safe custody. The papers appertaining to cases finally disposed of, are handed over to the record-keeper as soon as the final roobakaree has received the Judge's signature.—*Ibid*, *par.* 5.

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986. The records of this office are arranged upon the principle alluded to in the latter part of paragraph 4, and with exception of the racks not bearing tickets of their contents and the Moonsiff's records not being in bustahs and some miscellaneous cases requiring more detailed subdivision (all of which has been directed to be done forthwith,) I am not aware of any alteration which could be suggested in this office as an improvement and at the same time absolutely requisite.—*Ibid*, *par.* 6.

Considerations of the Judge of Cuttack and boards for the means of preventing the manifold abstraction of stamped paper provided by the court, and re-filing the same a second time, after obliterating the original writing.

987. Numerous recent instances of the detection of fraud in the surreptitious abstraction from civil records, of stamped paper already once filed in court and applied to its destined use, and of the re-filing of the same a second time after washing, or otherwise obliterating the original writing thereon, sometimes in real, but even in fictitious cases, have led the Comptroller and Board of Customs and Revenue, in conjunction with the Board of Customs and Revenue, to consider what are the most effectual means of checking the recurrence of such frauds, with a view to prescribing some general precautionary rule for the prevention of practices which cause serious loss to the State, and which it is obvious, the warning conveyed by Circular order of the Court, No. 112, dated 10th April, 1835, Western Provinces, announcing a discovery of similar malpractices in zillah Fitchpore, has not served to repress.—*Cir. Ord.* 5th May 1843, *par.* 1.

Description of the two modes in which such frauds have been usually effected

988. Frauds of the nature alluded to are understood to have been usually effected in two ways:—1st, By abstracting from the old "nuthies" of decided suits, sheets of blank stamped paper not unfrequently found to have been filed with the record, in consequence of no paper of the exact value wanted having been in store at the time with the stamp officer or vunder, and appropriating the same for a fresh suit. 2d, By abstracting from the record old *written* stamps, and re-filing the same as new, after erasure of the former writing by washing or some chemical process.—*Ibid*, *par.* 2.

989. The Court observe, that in the Futtehpore frauds, and on an occasion lately reported by the Judge of Cawnpore, the connivance or confederacy of Government servants, connected with the record office was proved, or suspected; and it will be obvious, that the abstraction of stamps from the misl could seldom occur without the knowledge, or culpable negligence of the amluh of the record department. But as a penal visitation on those officials, by dismissal or criminal prosecution, can only meet the particular occasion of fraud without producing any general or extensive moral effect in deterring others, beyond the locality or district where it may occur, it appears desirable to devise a plan, that may operate as an effectual preventive and bar to the acts now denounced.—*Ibid*, par. 3.

The connivance or confederacy of the govt. record officers in these frauds has been proved or suspected; and it is desirable to devise a plan which may operate as an effective bar to these acts.

990. The Court are accordingly pleased to direct as follows:—To prevent a repetition of the first kind of fraud, described in paragraph 2 of this Circular, Judges will cause the records of decided suits deposited in the dusters, both of their own and the subordinate Civil courts, to be inspected, and where any blank stamps may be found, will destroy the same, certifying in Oordoo, attested by their full English signature, on the back of the paper on which the plaint has been written to the *left* hand side of the *lower* stamps, that a piece of stamped paper of such a value, bearing such a number and endorsement of the vender, filed with the stamp whereon the certificate is written, as having been required to make up a given amount of stamp duty, has been destroyed in their presence—a similar course will be followed in regard to blank stamps of this kind, that may hereafter be filed in any court, when the case shall have been finally decided—but not prior to such decision.—*Ibid*, par. 4.

The judges will examine their records, and destroy any blank stamps which may be found, entering a full certificate of the transaction. The same course to be pursued regarding any blank stamps hereafter filed, when the case is finally decided.

991. To obviate the commission of the *second* kind of fraud, the Court have resolved on directing the *punching* of all stamped paper once given into any court applied to its destined use, and *not liable to be returned to the party filing it*, and consequently no longer legally available for any other purpose, by which means both a permanent mark will be affixed, and the written stamp remain unimpaired for objects of record.—*Ibid*, par. 5.

All stamped paper given into any court and not liable to be returned to the party filing it, will be punched.

992. It is, therefore, ordered that no writing shall be engrossed on the face or reverse of any stamp impression, and that each sheet of stamped paper filed in any Civil court, Native or European, for permanent retention with the record, shall have a circular piece of 3-8ths of an inch diameter, cut out from the upper circular stamp, (whether of the Stamp Office or the Treasury,) by the aid of an instrument similar to the wadcutter of a gun, it being essential to enjoin one uniform mode and part of the stamp for performing the operation, as a guide to the eye where to look in order to the detection of any filling up of the hole in the punched paper, which must be supposed to have been effected, or attempted, prior to a fraudulent presentation over again, of an already used stamp. While the removal of a part of the inscription of the stamp will render the restoration of the characters defaced extremely difficult, the size of the part so removed cannot in any case so mutilate the impression but that sufficient must remain to indicate the value of the stamp and the office in which it was impressed, independently of the impression at the lower end of the paper.—*Ibid*, par. 6.

No writing to be engrossed on the face or the reverse of the stamp impression. Dimensions of the circular piece to be cut out of every upper circular stamp.

993. It is meant, that the stamps in *all decided cases*, as well as those now filing or to be filed shall be subjected to this process. In the *former* case, Judges will confide the duty to their serishtadar or record keeper, themselves afterwards inspecting each case, in bundles of 20 or 40 at a time, to satisfy themselves before return of the record to the duster, that what was required has been duly performed. This will also present a good opportunity for exam-

The stamps in all decided cases, and in all now filing or to be filed to be subjected to this process. The serishtadar will perform this duty in reference to former cases.

ing whether any stamps are missing from old decided suits, which may have been abstracted for the purpose of being filed over again. As respects cases now pending the same course will be followed after decision, before their final consignment to the duffer of the Zillah court.—*Ibid.* par. 7.

The serishtadar will punch all stamps and other papers filed in future. The Zillah and uncov judges will sign no order for such papers to be filed, or sign them, till they are punched

994. As regards plaints and other stamped papers, liable to be punched, which may be filed after this order takes effect, the duty of using the instrument for punching will be assigned, in each court, to the serishtadar or other officer who receives the paper, and Judges of both the Zillah and subordinate courts, who sign the order for such stamped paper being filed, are cautioned to attach their signature to no paper of the kind requiring to be punched, which has not undergone that process.—*Ibid.* par. 8.

Documents which are liable to be returned to the parties are to be carefully exempted from the punching process

995 Officers are, at the same time, warned to exercise special care, that documents or exhibits, copies or other authenticated writings, engrossed on stamped paper, which are *not* required to be kept in the offices to which they may be presented, and *which are liable to be returned to the parties*, are exempted from the punching process, otherwise confusion and further occasion for fraud are likely to arise.—*Ibid.* par. 9.

Remark of the S D A, that the foregoing orders have not been complied with

996. By an inspection of the records of appealed causes, recently received in this court, it has been ascertained that in some districts the requirements of Circular order, Sudder dewanny adawlut, No. 16, dated Lower Provinces the 5th, and Western Provinces 25th May, 1843, are *not* fulfilled in the manner thereby prescribed. Among the records adverted to, stamped papers have been found, from which no portion has been excised, and thus, under the practice observed in this court, of suffering no paper to pass out of the record office without being punched, provided it be such as ought to be punched, extraneous labor is imposed upon the ministerial officers of this court.—*Cir. Ord.* 11th May 1844, par. 1

The duty of attending to these regulations strictly enforced on the courts

997. It appears, therefore, necessary to the Court, to call the attention of the civil Judges to the Circular order in question, to impress upon them the importance of those objects, which it was designed to effect, the protection, namely, of the State from serious loss, and of the community at large from the frauds which are facilitated by the abstraction of stamped papers from old records, and to desire a strict adherence to its directions in future, both on their own part, and on that of their subordinates.—*Ibid.* par. 2

Any deviation from these rules will be seriously noticed by the courts

998. Any deviations from the rules prescribed by the Circular above cited, which may be brought to light after the publication of this order, will be seriously noticed by the Court.—*Ibid.* par. 3.

A précis of the foregoing rules is given for general reference

999. A précis of the rules on the subject is annexed, for convenient reference. All stamps filed and not liable to be returned, are to be punched. In old cases, the duty is to be performed by the serishtadar of the Zillah court, but under the supervision of the Judge. In pending cases, the punching is to be effected by the same officer, after the decision, and before consigning them to the record office. Stamps which may be now filed will be punched by the serishtadar or other officer receiving it, and Judges of all grades, when signing the order for filing, are to see that the rule is observed. Blank stamps which are filed to make up for deficient value of any petition, &c. In old cases, such stamps are to be destroyed by the Zillah Judges, and a certificate of the fact endorsed on the principal stamp. In pending cases, the same course is to be followed, after decision, and before consigning them to the record office.—*Ibid.* par. 4.

## SECTION LXI.

*Custody of Monies paid into the several Courts.*

1000. *Extract of a Letter from the Hon. the Court of Directors, dated the 11th April, 1826.*

—We are not aware of the nature of the rules which have been established for preventing the recurrence of similar abuses, but we have to suggest that all monies paid into the Civil and Criminal courts, either in satisfaction of decrees, or otherwise, should be paid directly into the treasury of the court; and in order to secure a strict observance of this rule, the treasurer of the court should be required to submit to the Judge a monthly statement of all monies received by him, specifying the names of the parties on whose account the monies had been lodged. A comparison of this statement with the register of the decrees and orders issued by the Judge would enable him to ascertain precisely the number of decrees which had been completely executed, and to institute an enquiry into the causes which had prevented the complete execution of the others. We are also of opinion, that all sums remaining unclaimed after a certain period, whether arising from monies paid into the court in the execution of decrees, or as the proceeds of the sale of property of persons dying intestate, or on any other account, should be transferred to the Collector of the district, in order that the same may be placed at the disposal of Government. Such transfer should not, however, be considered in the slightest degree to affect the claims of the parties legally interested to recover their property, but it should be adopted as the best mode of deposit calculated for protecting the rights and interests of individuals, by removing all strong temptations on the part of the Native ministerial officers of the courts, to embezzle or otherwise misappropriate the funds placed under their charge. Our purpose is, that all sums should be brought to account, and that they should always be forthcoming on being claimed by the right owners. But the mode by which this will be best effected is a matter of detail into which we cannot conveniently enter, and the determination of which we therefore leave to the discretion of your Government.—*Cor. Ord. 11th Aug. 1827, par. 83.*

All monies paid into any court should be made over to the treasurer

Monthly statement of the treasurer

It is to be compared with the register of decrees and orders

Sums unclaimed for a certain period to be transferred to the collector.

Reasons for this transfer

Object of the court's orders.

1001. You will therefore be pleased to direct the Principal Sudder Ameens and Sudder Ameens of your district, who are or may be stationed at any other place than the sudder station of the district, to deposit in the treasury of the Collector or Deputy Collector of the station, all sums of money paid into their courts on account of vakeels' fees, execution of decrees, &c. and to keep registers of such deposits in the Persian Language, in the same form as such registers as kept in your office, with such detailed instructions as you may think necessary. The Court are of opinion, that each deposit sent to the Collector's treasury should be accompanied by an extract from the register of deposits, as suggested by the officiating Deputy Collector; and with regard to the payment, that an order from the Sudder Ameen, detailing the number and other particulars of the deposit in the register, countersigned by the Collector or Deputy Collector, would be sufficient authority to the treasurer to pay it.—*Cor. Ord. West. C. 16th Nov and 28th Dec. 1832, Cal. C. 16th Nov 1833.*

All P. S. A. and S. A. in the interior of the district will deposit all sums paid into their courts with the collector or deputy collector

Mode in which these sums are to be paid out again

1002. The Court having again had before them your letter, No. 20, under date the 3d April last, direct me to communicate to you their opinion, in reply to the question therein submitted, that applications for the payment of sums of money deposited in court must in every case be made on stamped paper as a record, unless a specific order should, at any time, have been passed ordering payment of the amount.—*Con. 1093, Cal. and West. C. 9th June 1837.*

Cases in which applications for sums deposited in court must be made on stamped or plain paper



## SECTION LXII.

*Remittance of Costs of Suit from one District to another.*

How sums realized  
by the judge in exe-  
cution of decrees will  
be remitted from one  
zillah to another

1003. I am directed by the Accountant General to request, that whenever the Judge of your district shall desire to remit to another court the amount realized by him in execution of a decree, forwarded to him by the Judge of another court, and paying the same into your treasury, shall apply for a bill upon the revenue treasury nearest to the Judge, in whose favour he may require the same, you will be pleased to grant a bill for the amount, provided the remitting Judge specifically states it to be on account of a decree of the other court executed by him, with reference to the parties of the suit, and the original number it bears on the file.—  
*Cir. Ord. 21st May 1830.*

## CHAPTER IV.

### TRIAL AND DECISION OF SPECIAL SUITS.

#### SECTION I.

##### *Institution of Suits against the Officers of Government.*

1. Collectors of the revenue, and their assistants and Native officers, Commercial Residents and Agents, and their assistants and Native officers employed in the provision of the investment, Salt Agents, and their assistants and Native officers concerned in the manufacture of salt, the Collectors of the customs, and their assistants and Native officers employed in the collection of the customs, the Mint and Assay Masters, and their assistants and Native officers, are declared amenable to the Zillah or City court in the jurisdiction of which they may reside, or carry on the public business committed to their charge, for any acts done in their official capacity, in opposition to any Regulation printed and published in the manner directed in Regulation 41, 1793.—*Reg. 3, 1793, Sect. 10.*—*Benares Reg. 7, 1795, Sect. 7.*—*Ced. and Cong. Prov. Reg. 2, 1803, Sect. 7.*

Collectors of the revenue and customs, commercial residents, salt agents, mint and assay masters and their respective officers, amenable to the courts for acts done in their official capacity

2. I beg leave to request the opinion of the Court of Sudder dewanny as to the construction to be put on the provisions of Section 16, Regulation 27 of 1803, as applicable to the following case.—A *malgoozar* is sent to the civil jail for confinement, on account of the non-payment of an alleged balance of revenue, due for a former, as well as the current year. Denying the justice of the demand, and furnishing the security required, he is released from confinement, and immediately enters a suit against the Collector to try the justice of the claim. Is such suit to be considered and investigated as summary or regular? It appears to me that the Regulation above quoted provides for all such suits being considered as the former, and particularly points out a summary process and investigation as the proper mode of procedure. But as difference of opinion seems to exist on the subject, I beg leave to refer it to the decision of the Sudder dewanny adawlut.—In reply to your letter under date the 26th of September last, I am directed to state the Court's opinion, that in the instance you represent, the suit instituted by the alleged revenue defaulter, under Section 16, Regulation 27, 1803, can only be tried as a regular suit.—*Con. 330, 17th Nov. 1820.*

The suit of an alleged revenue defaulter to contest the collector's demand against him, must be instituted and proceeded on as a regular suit.

3. On the application of a Collector to the Civil court for the confinement of a defaulting *tehseldar*, or other Native officer, the courts cannot proceed in any other manner than according to Sections 16 and 19, Regulation 3, 1793, &c. on the defaulter's denying the justness of the whole or part of the demand, and furnishing security to institute a suit against the Collector in fifteen days to contest the demand, and pay what may be adjudged due, the Court will release the defaulter; and the security having been given, the suit must be instituted and proceeded upon as a regular suit.—*Con. 282, 29th Dec. 1817.*

*Idem*

Individuals how to proceed, who may consider themselves aggrieved under the regulations by any special order of govt., or the boards of revenue, or trade

4. If a Native, or any other person not being a British subject, shall consider himself aggrieved under any Regulation printed and published in the manner directed in Regulation 41. 1793, by an act done by any of the officers of Government described in Section 10, pursuant to a special order originating with the Governor General in Council, or the Board of Revenue or of Trade, the officer by whom the act may be done is not to be held to be sued for it. In such cases Government is to be considered as the defendant -- *Reg. 3. 1793, Sect. 11.*

Complaints against public officers at the presidency, which are cognizable in any court of zillah dewanny adawlut, to be received and tried in the dewanny adawlut of the 24 pargannahs.

5. All complaints against the Collector of Customs at Calcutta, or his public officers, or any other public officer at the Presidency, which by the Regulations in force are cognizable in any Court of Zillah dewanny adawlut shall be received, tried, and determined, as prescribed in the Regulations, by the Judge of the dewanny adawlut of the Twenty-four Pargannahs, constituted in pursuance of the Regulation now enacted.-- *Reg. 7. 1806, Sect. 8*

Agents and their officers liable to be sued in the zillah dewanny adawlut for breach of regulations under the restrictions hereinafter specified

6. The Opium Agents and their Native officers of every description, are declared amenable to the dewanny adawlut of the city or zillah within the jurisdiction of which they may be stationed for all acts done by them in their official capacity, provided however, that any person conceiving himself aggrieved by the act of an Opium Agent or of any ministerial officer acting under his authority, shall, in the first instance, make application for redress to the Agent himself, and in the event of his not being satisfied with the order which the Agent may pass upon such application, it shall then be competent to him either to lay his case by petition before the Board of Trade, or at once to seek redress in the dewanny adawlut of the city or zillah within the jurisdiction of which he may reside. The rules contained in Regulation 2. 1814, shall be considered applicable to all cases that may arise under the operation of this section, and the course therein prescribed shall be observed in the admission of such cases. -- *Reg. 13. 1814. Sect. 18.*

Rules contained in reg. 2. 1814, applicable to cases under this section

Persons employed in the salt manufacture, who may be aggrieved by an act of a salt agent, how to seek redress during the manufacturing season

7. During the manufacturing season viz. from the middle of the month of October to the middle of July, if any molungee or labourer, or any other person, who may be employed in the salt manufacture, shall deem himself aggrieved by any act or order of the Agent himself (not being an act or order done under the powers vested in Agents by this Regulation, in cases hereafter declared to be judicially cognizable by Agents and Superintendants of salt chowkies,) he shall in the first instance state his complaint in person, or by vakel to the Agent, and in the event of the Agent refusing to afford him the required redress, or of his omitting to grant it within a reasonable time, the complainant shall be at liberty to sue him in the dewanny adawlut. -- *Reg. 10. 1819. Sect. 13. Cl. 2*

How to seek redress if aggrieved by the act of an assistant or other salt officer, molungee, &c

8. During the manufacturing season, if a molungee, or labourer, or any other person who may be employed in the salt manufacture, shall deem himself aggrieved by any act of the assistant to the Agent, or any officer attached to a Salt Agency, or by any contractor molungee or beoparree, he shall in the first instance state his com

plaint in person, or by vakeel, to the Agent in order that the Agent may give such redress as it may be in his power to afford : but if the Agent shall refuse to afford to the complainant the required redress, or omit to grant it within a reasonable time ; or if the case be such as that the Agent may not have it in his power to redress the injury received, the complainant shall be at liberty to sue in the dewanny adawlut the party from whom he may have sustained the injury, or the Agent, if the act shall have been done under his orders, and the court shall hold the party, or the Agent, responsible accordingly.—*Ibid*, Cl 3

9. In the case, specified in the two preceding clauses, the courts are not to receive the suit of the complainant, unless he shall prove, either by oath, or in any other mode which the court may deem satisfactory, that he made the previous application for redress to the Agent, as directed in these clauses.—*Ibid*, Cl. 1.

Courts not to receive complaints unless the course prescribed above shall have been followed.

10. In the several cases specified in the second and third clauses of this section, the complainant, if the engagements which he may have entered into on account of the manufacture be not completed, shall not quit the place of manufacture to prosecute his complaint in person, without the permission of the head officer of the aurnag under which he may work, or of the Agent or his assistant, but shall employ a vakeel for that purpose, unless he shall offer to substitute a person to perform his work in his room, and the Agent, or his assistant, or the head officer of the aurnag shall be of opinion that the work will be equally well performed by the person so offered to be substituted—in which case, the Agent or his assistant, or officer shall permit the complainant to depart.—*Ibid*, Cl 5

Restrictions with regard to the complainant absents himself from the place of manufacture, before his engagements have been completed

11. During the months of Sawun, Bhadoon, and Assin, molungees, labourers and all other persons having entered into engagements on account of the salt manufacture, or having been employed in it, who may consider themselves aggrieved by any acts done by the Agent or his assistant, or any of his officers, or other persons employed by him, in breach of this Regulation, or any other Regulation printed and published in the manner directed in Regulation 41, 1793, are declared to have the option of suing either in person, or by vakeel, the party from whom they may have sustained the injury, in the dewanny adawlut, without preferring the previous application for redress directed in the preceding clauses of this section, to be made during the manufacturing season, and further, with a view to ensure the molungees, labourers and other persons engaged in the manufacture, or transportation of salt, speedy redress of injuries they may sustain, the courts are required to bring the suits instituted by the said persons for injuries sustained by them from the officers aforesaid, to a termination as expeditiously as possible, by trying them in preference to other suits :—Provided, however, that nothing in the six preceding clauses shall be construed to empower the Courts of judicature to take cognizance of acts done by Salt Agents, in virtue of the judicial powers vested in them by this Regulation, in respect to fines, confiscations and other penalties, prescribed for cases of illicit dealings in salt.—*Ibid*, Cl. 7.

Persons aggrieved at liberty to prosecute in the usual mode during certain parts of the year, without previous application to the salt agent.

## SECTION II.

*Suits against Public Officers—Rules regarding the Petition.*

Whenever a petition of complaint may be preferred against a collector or other person for acts connected with his official duties, the judge or judges of the civil court by whom the petition may be received, is to transmit it to the board to whose authority the person complained against may be subject.

12. Whenever a petition of complaint may be preferred against a Collector of the land revenue or customs, a Commercial Resident, Salt Agent, or Opium Agent, or other person amenable for acts connected with his official duties, shall be presented to any Court of civil judicature competent to receive and try such cases, the Judge or Judges of such court shall transmit the petition so received to the Board of Revenue, Board of Commissioners, or Board of Trade, according as the person against whom the complaint may be preferred, may be subject to either of those authorities.—*Reg. 2, 1814, Sect. 3. Cl. 1.*

Procedure of the commissioner when a petition of suit against a collector of land revenue or other European officer is presented to him

13. On a petition of suit, preferred in a Civil court, against a Collector of land revenue or other European officer, subject to the authority of a Commissioner for any act done in his official capacity, being referred by the Judge of the court to the Commissioner, that officer, provided the relief sought can be afforded by disallowing or reversing the act or order complained of, may grant such redress at his discretion, provided it be within his legal competence. But if it be not within his competence or in case redress cannot be so afforded, the Commissioner shall, if he be of opinion that the claim should be allowed or compromised, report the case for the orders of the Sudder Board.—*Cir. Ord. Sudd. Bd. Res. 10th Aug. 1842, Rule 20.*

If the commissioner thinks the party should be left to a private prosecution, he will report the matter to the sudder board

14. If the Commissioner shall be of opinion, that the party should be left to prosecute his claim in the Civil court, he shall submit a full report for the information of the Sudder Board, who, in their capacity of Superintendent and Remembrancer of Legal Affairs, will issue such instructions as they may deem proper.—*Ibid, Rule 21.*

When a petition of plaint has been filed in the civil court, and transmitted to any of the boards under reg. 2, of 1814, and six weeks have elapsed without reply, a report must be made to the S. D. A

15. With reference to the provisions of Regulation 2 of 1814, and to enable the Court of Sudder dewanny adawlat to bring to the notice of Government any delay which may occur between the date of filing and admitting the description of suits to which that Regulation relates; I am directed by the Court of Sudder dewanny adawlat to desire, that whenever you may have transmitted a petition of complaint, preferred in your court against a Collector of land revenue or customs, a Commercial Resident, Salt Agent, Opium Agent, or other person amenable for acts connected with his official duties, to the Board of Revenue, or other superintending boards, as required by the first clause of Section 3 of the said Regulation, and the period of six weeks shall have elapsed without your having received from the superintending board a final reply to your communication, you will report the circumstances of the case to the Court, to enable them to bring the same to the notice of the Governor General in Council.—*Cir. Ord. 6th Aug. 1830.*

Recapitulation of this rule

16. With regard to applications under Clause 1, Section 2, Regulation 2 of 1814, the zillah and city Judges are required by the Circular orders of the 6th August, 1830, No. 21, whenever they may have transmitted a petition of complaint preferred in their court against a Collector of land revenue or customs, a Commercial Resident, Salt or Opium Agent, or other person amenable for acts connected with his official duties, to the Board of Revenue, or other superintending boards, as required by the clause abovementioned, and the period of six weeks shall have elapsed without their having received from the superintending board a final reply to

their communication, to report the circumstances of the case to the Court to enable them to bring the same to the notice of Government.—*Cir. Ord. Cal. C. 7th, West. C. 21st Dec. 1838.*

17. The Court observe that the Regulations make no exception in favour of such petitions [that is, petitions of complaint preferred under Regulation 2, 1814, against the officers of Government in their official capacity,] and they are, therefore, of opinion that it was intended they should be written, when first presented, on stamped paper of the value in like manner with all other complaints.—*Con. 1116, Cal. and West. C. 8th Dec. 1837.*

Petitions against the officers of govt. under reg. 2, 1814, must be written on stamped paper.

18. The Court of Sudder dewanny adawlut have had before them your letter, dated the 10th instant, requesting to be informed, whether you are competent to entertain a suit instituted by a minor and his guardian, against the Collector, for having, under the authority of the Court of Wards, disposed of the minor's estate.—In reply, I am desirous to acquaint you, that the Court are not aware of any Regulation which debars a minor, under these circumstances, from the same rights and privileges with respect to the mode of seeking redress for an alleged grievance, as are enjoyed by the community generally; and that in the Court's opinion he is, with his guardian, fully competent to institute a suit of the nature alluded to. It will of course be the duty of the Judge, to whom the petition of plaint is preferred, to forward the same under the first clause of Section 3, Regulation 2, 1814, for the consideration of the Board of Revenue, and to proceed to the trial of the suit under the fourth clause of the above section, in the event of its not being deemed requisite by that authority that direct redress should be afforded.—*Con. 410, 16th Dec. 1825.*

A minor and his guardian may sue a collector under reg. 2 of 1814, for having disposed of the minor's estate; but the petition of plaint must be sent in the first instance to the board of revenue

19. The Board of Revenue Board of Commissioners, or Board of Trade, on receipt of any petition of the nature described in the preceding clause, shall immediately take the circumstances stated therein into their consideration, in order to judge whether the redress solicited should be granted directly by Government, or whether the complainant should be left to prosecute his suit in the regular course of law.—*Reg. 2, 1814. Sect. 3, Cl. 2.*

The boards on receipt of any such petition to determine whether the redress solicited should be granted directly by government, or whether the complainant should be left to prosecute his suit in the regular course of law

20. Should the Board of Revenue, Board of Commissioners, or Board of Trade be of opinion, after making due enquiries on the subject either by consulting their own records, or by a reference to the local authorities, or in any other mode which may be judged advisable, that the party complaining has been actually aggrieved, and that he is entitled to redress directly from Government, they shall submit the necessary report on the subject accompanied with their opinion, as to the nature and extent of the relief which should be granted.—*Ibid. Cl. 3.*

The boards how to act when the party complaining may be actually aggrieved, & may appear entitled to redress from govt

21. Should the Board of Revenue, Board of Commissioners, or Board of Trade be of opinion, after making due enquiries on the subject, that the party complaining should be left to prosecute the case in the regular course of law, they shall inform the Judge or Judges of the court from whom the petition may have been received of the result of their deliberations on that point; and such communication shall be deemed sufficient authority for the formal institution and trial of the suit in question. The boards aforesaid shall at the same time determine whether the suit should be defended

And how to act in case the complainant should be left to prosecute the suit in the regular course of law

by the public officers as an action against Government, or by the person affected by the complaint in his individual capacity, and shall inform the Judge or Judges by whom the case may have been referred to them of their decision on this point accordingly.—*Ibid*, Cl. 1.

The provisions of this regulation only applicable to cases mentioned in sec 2 & 3, reg 8, 1806, and not to charges mentioned in reg 17, 1813

22. In order to prevent misconstruction, it is hereby declared, that the foregoing provisions are only intended to apply to cases of the description of those mentioned in Sections 2 and 3. Regulation 8, 1806, and are not to be considered applicable to charges of corruption, for the receipt and trial of which separate provisions have been established by Regulation 17, 1813.—*Ibid*, Sect. 4.

Suits instituted under cl 4, sec 3, reg 2, 1814, how to be entered on the file.

23. In cases in which a party preferring a petition of complaint against a Collector of the Land revenue, or of customs, or against a Commercial Resident, or other person amenable to the Courts of civil judicature, for acts connected with his official duties, may not be considered entitled to redress from Government, under the provisions of clause third, Section 3, Regulation 2, 1814: and who may consequently, under the fourth clause of that section, proceed to prosecute the case in the regular course of law, such suits shall be entered on the file of the court, from the date on which the petition was originally received, and the case shall be brought to a hearing and determination, in the order in which it would have been heard and determined, had it been originally instituted on such date.—*Reg. 13, 1829, Sect. 5.*

### SECTION III

#### *Suits against Public Officers—Defence of Suits—Process—Security*

Course to be pursued when the alleged defaulter has given security and instituted a suit to try the justness of the demand

24. When the alleged defaulter has given security and instituted a suit to try the justness of the arrears of revenue demanded from him, the Civil court *may direct the Collector not to sell his real property*, but the Collector may attach and sell his personal property.—*Con. 333 29th Dec. 1821.*

Case in which the zillah judge cannot stay the sale of the real property of a defaulting malgooniar who sues the collector.

25. The zillah Judge cannot stay the sale of the real property of a defaulting *malgooniar* pending the investigation of a suit instituted to dispute the demand, on a petition being filed previous to the advertisement of the defaulter's lands for sale, and on good security having been furnished to fulfil the award of the court.—*Con. 353, West. C. 27th Dec. 1833, Cal. C. 17th Jan. 1834.*

Agents may defend suits, instituted against their assistants and officers, but at their own risk

26. The Agents are authorized, in cases in which they may deem it advisable so to do, to undertake the defence of any suit that may be instituted in the dewanny *adawlat* against their assistants or any of their officers, or other persons employed by them in the business of the manufacture; but in such cases the Agent himself is to be considered as responsible for the decree of the court.—*Reg. 10, 1819, Sect. 13, Cl. 6.*

Salt officers not liable to be prosecuted for acts of their predecessors

27. The Agents, their covenanted and uncovenanted assistants, and head officers of *aurungs* shall not be liable to prosecution for any official acts of their predecessors. But persons who may be removed from an agency, or an assistantship, or the appointment of head officer of an *aurung*, are to carry on, in the same manner as if they had continued

Suits to be defended by the individuals against whom the

in the office, all suits instituted against them in their official capacity,—unless the Board of Customs, Salt and Opium, upon a consideration of the circumstances of the cases, shall deem it advisable to order the Agent for the time being to carry on the suits. This rule however is not to extend to suits in which an Agent, or a covenanted or uncovenanted assistant, or head officer of an auring who may have been removed, shall have been engaged in virtue of the orders from the Board of Customs, Salt and Opium, or the Governor General in Council. All such suits are to be carried on by the Agent for the time being at the risk of Government.—*Ibid*, Sect. 16.

28. No Collector is to be liable to prosecution for any official acts of his predecessor. But persons who may be removed from the office of Collector of the revenue of a zillah, are to carry on, in the same manner as if they had continued in the office, all suits of the nature of those described in Section 33, in which they may be engaged, and all suits preferred against them in the Zillah courts, for sums that they may have demanded or received on behalf of Government, and for the costs and damages in which they are declared eventually answerable; as well as all suits, being appeals from decisions in suits of the last mentioned description, excepting such of those appeals as they may have preferred or in which they may have become a party, in consequence of orders from the Board of Revenue.—*Reg* 14, 1793, Sect. 41.—*Benares Reg* 6, 1795, Sect. 47.—*Ced. and Cong. Prov. Reg* 27, 1803, Sect. 44.

Collectors not to be liable to prosecution for the acts of their predecessors.

What suits persons removed from the office of collector, are bound to prosecute or defend after their removal

29. When any process or order shall be issued by the Courts of civil judicature, or the Magistrates, to a Salt Agent, or his assistant, the Judge or the Register to the court, is to forward it under a sealed cover, addressed to the Agent, or assistant, and superscribed with his official attestation. The Agent, or his assistant, is immediately to acknowledge the receipt of the order, or process, by an endorsement to that effect on the back of it, and is to return it under a sealed cover, addressed to the Judge, or Register.—*Reg* 10, 1819, Sect. 15.

Process of courts of justice how to be issued to salt agents and assistants.

30. When any process shall be issued by a Court of civil judicature or a Collector, Assistant Collector, or officer in charge of the abkarrynehal to an [Opium] Agent, the Judge or the Register of the court, or the Collector, Assistant Collector or officer aforesaid, is to transmit the process under a sealed cover, addressed to the Agent in the form of a letter, and superscribed with his name and official appellation. The Agent is immediately to acknowledge the receipt of the process by an endorsement to that effect on the instrument, and to return it under a sealed cover addressed to the officer from whom it may have issued.—*Reg* 13, 1816, Sect. 22.

Civil process to be issued to the agents under a sealed cover, and to be returned by them in like manner

31. When any process or order shall be issued by any of the Courts of civil judicature, to the Collector of a zillah, in suits instituted under this Regulation, the Register of the court immediately serving the process or order, is to transmit it under a cover sealed in the form of a letter, and superscribed with his name and official appellation, and addressed to the Collector. The Collector is to acknowledge the receipt of the process or order, on the day on which he may receive it, by a letter addressed to the Register of

Process issued against collectors under this regulation, how to be served



the court by which it may have been served.—*Reg. 14, 1793, Sect. 38.—Benares Reg. 6, 1795, Sect. 44.—Ced. and Cong. Prov. Reg. 27, 1803, Sect. 41.*

Cases in which security is to be demanded from collectors for costs or damages, or for the performance of decrees of the court.

32. Security is not to be demanded from the Collectors for their personal appearance, in any suit in which they may be engaged under this Regulation. Nor shall any security be required from them for the payment of costs, or for the performance of the decrees or orders of the court, in suits which are directed by this Regulation to be carried on by the vakeel of Government, and at the public expence. In suits for sums demanded or received by the Collector on behalf of Government, for the costs and damages in which he is declared eventually responsible, the courts are to require the same security from the Collector for the payment of the costs and damages, as would be taken in similar cases from individual suitors, but they are not to require any security from him, for the performance of their decrees respecting the sums which may constitute the subject of the suits, as Government will be answerable for the due performance of them.—*Reg. 14, 1793, Sect. 36.—Benares Reg. 6, 1795, Sect. 42.—Ced. and Cong. Prov. Reg. 27, 1803, Sect. 39*

*Idem*

33. In the suits described in Section 33, which may be instituted against the Collector, he is to give the same security for the payment of the costs, and the performance of the decrees, and orders of the courts, as would be required from individual suitors in similar cases. If a Collector shall refuse, or omit, to pay within the limited period, any sum of money that may be ordered to be levied from him, either on account of the suits described in Section 33, or as costs or damages in any other suits, for the expences incurred in which he is declared eventually responsible, the court is to levy the amount from his surety by the customary process. If the court shall not be able to obtain payment from his surety, the Judge is to report the circumstances to the Governor General in Council, who will order the amount to be paid from the public treasury, and deduct it from the allowances which may be receivable by the Collector from Government. In all other cases, if a Collector shall omit or refuse to obey any order or decree of a Court of judicature, the court from which the process shall have issued is to fine him according to the nature of the offence. In the event of the Collector refusing or omitting to pay the fine, the court is to report the circumstances to the Governor General in Council, who, provided he shall approve of the fine, will order the amount to be stopped from the allowances which may be receivable by such Collector from Government.—*Ibid.*

Courts how to proceed in the event of a collector omitting or refusing to obey any order or decree

The collector is bound to comply with a final decision passed against govt.

34. The Court are not aware of any objection to a continuance of the established practice, in directing, by precept, the Collector, or other public officer who may have conducted the suit on the part of Government, to comply with a final decision given against Government: and any wilful disobedience on the part of the Collector is sufficiently provided against by the existing rule, that if a Collector shall omit or refuse to obey any order or decree of a Court of judicature, the court, from which the process shall have issued, is to fine him according to the nature of the offence. In the event of the Collector refusing or omitting to pay the fine, the Court is to report the circumstances to the Governor General in Council, who, provided he shall approve of the fine, will order the amount to be stopped from the allowances which may be receivable by such Collector from Government.—*Civ. Ord. 16th April 1818, par. 8.*

If a collector refuses or omits to pay the fine the court will represent it to the G. G. in C.

The G. G. in C. will order it to be stopped from his allowances, if necessary.

## SECTION IV.

*Suits in which Native Officers and Soldiers are Parties—Institution of Suit.*

35. Whereas doubts have arisen whether the Regulation 15 of 1816 of the Bengal code is still in force or how much, if any, of its provisions is still in force : It is therefore hereby declared and enacted, that the said Regulation and every provision thereof are still in force.—*Act XV. 1845, Sect. 1.*

Reg. 15 of 1816, and every provision thereof are still in force.

36. Such parts of the Regulations in force as prohibit the Courts of civil justice from corresponding by letter with parties in depending suits ; or as direct that no pleadings shall be received in any civil cause except from the parties or their authorized pleaders : such parts of the Regulations in force as require generally, that depending causes shall be brought to trial according to the order in which they may stand on the file, and such parts of the Regulations in force, as prohibit the courts from furnishing copies of decrees, or from receiving mooktarannahs on any other paper than the prescribed stamped paper, are hereby declared to be subject to the modifications contained in the following sections of this Regulation.—*Reg. 15, 1816, Sect. 2.*

Provisions of certain regulations modified

37. Whenever a Native officer or soldier on the military establishment of the Presidency of Fort William may be desirous of instituting a regular or summary suit in any of the local Courts of civil judicature, and shall not be able to obtain a furlough or leave of absence for the purpose of superintending or conducting such suit in person, he shall be at liberty to execute a mooktarannah or power of attorney, drawn up according to the form No. 1, in the Appendix to this Regulation, authorizing and appointing any member of his family or other person to institute and carry on the suit, and to perform all acts in the original trial of the cause, and eventually in appeal, in the same manner as if the party were himself personally present and consenting.—*Ibid, Sect. 3, Cl 1.*—Whereas I, A. B., inhabitant of village ———, purgannah ———, in the district of ———, son of ———, of the cast of ———, at present (here specify his rank) of the ——— battalion of the ——— regiment, stationed at ———, having occasion to institute (or defend) an action for\* ——— do hereby nominate and appoint C. D.† ——— to be my attorney, (or mooktar) and I bind myself to abide by whatever he the said attorney may do in my behalf in the prosecution‡ (or defence) of the said suit. The said attorney will either prosecute (or defend) the suit in person, or will appoint one or more of the authorized vakeels of the court to prosecute (or defend) the same under the instructions of the said attorney, as he may think proper. In the event of an appeal being preferred from the judgment passed in the suit, the said attorney is further hereby empowered to act for me on the appeal, in like manner as on the original suit.

Native officers and soldiers may authorize any person to institute and conduct suits in which they may be a party

(Sd.) ———

Executed in my presence,

—*Reg. 15, 1816, App. No. 1* ] ———, *Comdy. — Detacht. or Batt. or Regt.*

\* Here insert briefly the nature and object of the suit, and the name of the adverse party or parties

† Here insert the name, place of residence, cast and his relationship (if any) to the Native officer or soldier

‡ As the case may be.

The mooktarnamah need not be written on stamped paper

38. Such mooktarnamah shall not be required to be written on stamped paper, but shall be executed by the Native officer or soldier in the presence of the commanding officer of the corps or detachment, to which he may belong, who shall countersign the same in testimony of its having been voluntarily executed.—*Reg. 15, 1816, Sect. 3, Cl. 2.*

The above document is to be transmitted to the register of the court by the commanding officer

39. The mooktarnamah so executed is to be transmitted by the commanding officer, under cover of a public letter drawn up in the form No. 2, of the Appendix, addressed to the Register of the court in which the suit is to be instituted, and upon the receipt of such letter, a notice shall be issued by the court for the purpose of procuring the attendance either personally, or by a constituted vakeel, of the person nominated in the mooktarnamah.—*Ibid, Cl. 3.*

To \_\_\_\_\_,

*Register of the Civil Court of Zillah \_\_\_\_\_.*

SIR,—In conformity with the third clause of Section 3, Regulation 15, 1816, I have the honour to transmit to you a power of attorney duly executed in my presence by A B, son of C D, of the cast of \_\_\_\_\_, inhabitant of \_\_\_\_\_, officer or sepoy (as the case may be) of the \_\_\_\_\_ battalion, \_\_\_\_\_ regiment. I am, Sir, &c.

—*Ibid, App. 2.*

*Comdg. — Batt. — Regt*

The judge is to communicate the inability or refusal of a mooktar to undertake the trust

40. If such person shall refuse to attend the court in person, or by a constituted vakeel, or shall decline to undertake the trust, or shall subsequently die, or be prevented by any other sufficient cause from discharging the duty confided to him, the court shall cause information of the same to be communicated to the Native officer or soldier, by an extract from the proceedings of the court enclosed in an official letter to be addressed by the Register, or in his absence by the Judge, to the commanding officer of the corps.—*Reg 15, 1816, Sect. 3, Cl. 1.*

The mooktarnamah to be filed with the court's proceedings if accepted by the person therein nominated to superintend the case

41. If the person nominated and appointed in the mooktarnamah shall attend the court in person, or by a constituted vakeel, and shall consent to undertake the duty confided to him, the original mooktarnamah shall be deposited in the court and annexed to the proceedings which may be held on the suit. The mooktar or attorney, so appointed and attending, may at his option, either prosecute the suit, and conduct the pleadings in person, or may constitute for that purpose one or more of the authorized pleaders of the court, under the provisions of Regulation 27, 1814. In all other respects the suit shall be instituted, tried and determined in conformity with the general rules in force for the institution and trial of other similar suits, provided however that, when the Native officer or soldier, who may be the real party in the suit, shall not be himself present at the time of its decision, an authenticated copy of the decree written on unstamped paper, shall, in each instance be transmitted, through the Register of the court, to the commanding officer of the corps or detachment, for the purpose of its being communicated to the Native officer or soldier.—*Ibid, Cl. 5.*

The suit is to be investigated in other respects under the general regulations.

42. And whereas it is just and reasonable to extend the privileges conferred upon Native officers and soldiers by the Regulations aforesaid in respect of exemption from stamps in legal proceedings. It is hereby enacted, that all the courts of the East India Company shall receive plaints in original suits, not being suits originating in loans or in pecuniary transactions of a commercial nature, upon unstamped paper, when the plaintiff is a Native officer or soldier in the military establishment of the Presidency of Fort William, Fort St. George, or Bombay. Provided, that the value of any stamp from which a plaintiff may be exempted by the last preceding section shall be charged in the decree on behalf of Government to the party cast, or to the parties respectively in such proportions as may be deemed equitable.—*Act XV. 1845, Sects. 3 and 4.*

Plaints in original suits not of a commercial nature from a native officer or soldier to be received on unstamped paper.

Value of the stamp to be charged on behalf of govt. to the party cast.

43. And it is hereby enacted, that if any Native officer or soldier shall institute a suit under this Act in which he is not *bonâ fide* interested, or not interested to the extent alleged in the plaint, for the purpose of enabling some other person to avail himself fraudulently of the advantages conferred by this Act, such Native officer or soldier shall be liable to a fine not exceeding five times the value of the stamped paper which the party interested would have required for the institution of the suit, otherwise than under this Act, such fine to be levied in the manner prescribed for the execution of decrees.—*Ibid, Sect. 5.*

Fine to be imposed on any N. officer or soldier instituting a suit to enable another fraudulently to take advantage of this act.

44. It is hereby explained that no part of the preceding clauses, or of the subsequent provisions of this Regulation, is intended to be applicable to claims originating in loans granted by a Native officer or sepoy, or in pecuniary transactions of a commercial nature.—*Reg. 15, 1816, Sect. 3, Cl. 6.*

This reg. not to be applicable to any pecuniary transaction of a commercial character, of a N. officer or soldier.

45. For the purpose of preventing as far as may be practicable the occurrence of *ex-parte* trials in suits instituted against Native officers or soldiers, it is hereby further enacted, that whenever a suit may be instituted in any Civil court against a person being a Native officer or soldier attached to a regular corps on the military establishment of the Honourable Company under the Presidency of Fort William, the plaintiff or appellant shall be required to state the same distinctly in his plaint or petition of appeal; and to specify to the best of his knowledge and belief, the corps to which such Native officer or soldier may be attached. If the plaintiff or appellant shall be unable to specify the corps, it shall be the duty of the court trying the suit, to endeavour to ascertain the point by such means of enquiry, as may appear practicable and expedient.—*Ibid, Sect. 4, Cl. 1.*

Rules to be observed to prevent an ex-parte trial of a cause in which a soldier or native officer is defendant.

46. A notice in the usual form, together with a copy of the plaint or petition of appeal on unstamped paper, enclosed in an official letter drawn up according to the form No. 3, of the Appendix, shall be then transmitted by the Register, or in his absence, by the Judge to the commanding officer of the corps, for the purpose of its being communicated to the Native officer or soldier against whom the suit may have been instituted: a similar notice shall be issued, when omitted in the first instance, from ignorance of the defendant's being a Native officer or soldier, attached to a regular corps, if at any subsequent period during the trial of the suit, it should appear to the court, that the defend-

A notice in the usual form to be transmitted to the commanding officer.

Fine to be imposed on a plaintiff or appellant in certain cases.

ant or respondent is a Native officer or soldier as above described, and in cases in which the plaintiff or appellant shall wilfully and intentionally omit to state in his plaint or petition of appeal, that the defendant or respondent is a Native officer or soldier, the court shall impose on such plaintiff or appellant, a discretionary fine not exceeding one-fourth of the amount of the institution fee, or stamp duty in each case.—*Ibid*, Cl. 2.

To -----,

*Commanding the ----- Bat. Lion ----- Regt. at -----.*

Sir, In conformity with the second clause of Section 4, Regulation 15, 1816, I have the honor to transmit to you the copy of a plaint filed in case No. ----- in this court by ----- against ----- stated to be an officer (or sepoy) in the corps under your command, together with a notice which I request you will cause to be served on the said ----- You are requested to acknowledge the receipt of the notice, and to inform the court whether it has been duly served on the abovenamed -----, or the reasons which may have prevented its being served on him. I am, Sir, &c.

Dewanny Adawlut

-----, Judge.

—Reg. 15, 1816, App. No. 3

The commanding officer on receipt of the notice will cause it to be duly served

47 The commanding officer after causing the notice to be served on the party to whom it is addressed, if practicable shall return it to the Register or Judge, with the written acknowledgement of the party, endorsed thereupon, together with any mook-tarnamah, which the party may be desirous of executing according to the form No. 1 in the Appendix, for appointing an attorney to defend the suit in his behalf. If from any cause the notice transmitted to the commanding officer cannot be served upon the Native officer, or soldier, to whom it is addressed it shall be returned by the commanding officer to the Register or Judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the court shall either make a further reference with the view of causing the notice to be duly communicated to the Native officer or sepoy or shall adopt such other measures for that purpose as on a consideration of the circumstances of each case may appear to be proper and consistent with the Regulation.—Reg. 15, 1816, Sect. 1, Cl. 3

Measures to be adopted by the judge if the notice cannot be served

## SECTION V

### *Suits in which Native Officers and Soldiers are Parties—Procedure and Decree.*

Rules to be observed by commanding officers in granting leave of absence to soldiers and native officers to enable them to superintend their own suits.

48 When a Native officer or soldier may obtain a furlough for the purpose of instituting or defending a civil suit in any of the local Courts of civil judicature, he shall be at liberty to request from the commanding officer of the corps or detachment, an official letter addressed to the Register of the court in which the suit is to be tried: such letter shall be drawn up according to the form No. 4, of the Appendix to this Regulation, but shall not give cover to any petition, nor contain any statement or explanation of the merits or circumstances of the case.—Reg. 15, 1816, Sect. 5, Cl. 1.

49. Such letter shall be delivered in person by the Native officer or soldier to the Register, or in his absence, to the Judge *ad hoc*, who is hereby authorized, at the request of the party, to nominate a vakool of the court for the purpose of furnishing to the Native officer or soldier, his legal aid and advice in preparing the pleadings and in carrying on the prosecution or defence of the suit. The Register, or Judge, shall at the same time cause the Native officer or soldier, to be duly apprized of the provisions contained in Regulation 27, 1814, and of any other Regulation in force, relative to the duties, and established fees of the pleaders attached to the Civil courts, which must of course be observed whenever a Native officer, or soldier, may wish to consult or employ a pleader.—*Ibid*, Cl. 2.

The court is authorized to nominate a vakool on behalf of the native officer or soldier

Provisions of reg. 27, 1814, to be duly attended to on such occasions

50. Nothing contained in the preceding section shall be construed to prohibit a Native officer, or soldier, from pleading his cause in person, or from employing any other authorized pleader of the court, whom he may prefer, instead of the pleader nominated for him by the court.—*Ibid*, Sect. 6

A native officer or soldier may plead his own cause or appoint his own pleader

51. The Courts of civil judicature are hereby authorized and required to bring to a hearing without regard to the order in which they may be filed, all suits excepting those of the nature alluded to in the sixth clause of Section 3 of this Regulation, in which a Native officer, or soldier, who may have obtained leave of absence from his corps, may be a party, and to pass a decision on each suit as speedily as may be consistent with the general rules in force, and with the due administration of justice.—*Ibid*, Sect. 7, Cl. 1.

Suits instituted before the court may be heard in any order possible

52. If the cause cannot be brought to a decision prior to the expiration of the furlough granted to such Native officer or soldier, the Judge or Register before whom the suit may be depending, is hereby vested with discretionary authority to grant to such Native officer, or soldier, an extension of his leave of absence for a period sufficient to admit of a reference being made to the commanding officer of the corps, with a view to ascertain whether the furlough can be prolonged for any further specific period. But whenever a Judge or Register may avail himself of the discretion above vested in him, he shall be careful to report the same immediately in an official letter to the commanding officer of the corps to which the Native officer or sepoy may be attached.—*Ibid*, Cl. 2

Made to be adopted by the court in the event of the expiration of the furlough before the cause be decided

53. In all cases in which a Native officer or soldier may return to his corps before a final decision can be passed in his suit, he shall be at liberty either to leave the further conduct of the suit to a constituted mookiat under a mooktinamah, duly executed according to the form No. 1, in the Appendix to this Regulation or to one or more of the established pleaders of the court empowered to act for him by a regular vakahitnamah. In either case a copy of the decree which may be passed in the suit shall be transmitted for the information of the Native officer or soldier, in the manner prescribed in the fifth clause of Section 3 of this Regulation.—*Ibid*, Cl. 3.

Idem

54. Whenever any land or real property belonging to a Native officer or soldier may be attached by a Court of justice for the purpose of realizing the amount of any judgment, fine or penalty imposed on such Native officer or soldier, the court shall cause notice

Rules to be observed when any land or real property belonging to a soldier or Native officer is attached

of the same to be issued in the manner prescribed in the second clause of Section 4 of this Regulation, and shall postpone the sale for such definite period as may appear reasonable, for the purpose of affording an opportunity to the Native officer or soldier to discharge the amount of the judgment, fine or penalty.—*Ibid*, Sect. 8.

Nothing in this regulation to be construed as affecting the provisions of reg. 20, 1810, or any modification of the latter regulation

55. Nothing contained in this Regulation shall be construed to affect or to alter the rules and provisions of Regulation 20, 1810; or to authorize the commanding officer of any corps or detachment to correspond with the Civil courts, or with the Collectors, regarding the merits of any judgment, or order, passed by them in the discharge of their official duty under the provisions of this Regulation.—*Ibid*, Sect. 10, Cl. 1.

The provisions of this regulation not to be considered applicable to certain descriptions of persons.

56. Nothing contained in this Regulation shall be construed to modify or to affect the existing rules for the trial of civil suits, in which persons who may have been discharged from the service, or who may be attached to provincial battalions, or to local or irregular corps, or who may be camp followers, or non-combatant retainers of the army, or who may be relations, or members of the family of a Native officer, or soldier, may be parties, the foregoing provisions of this Regulation are to be considered as strictly and exclusively applicable to Native officers or soldiers who may be entertained in regular corps and on the actual strength of the army, on the establishment of the Presidency of Fort William.—*Ibid*, Cl. 2.

Reg. 15, 1816 is applicable to native officers and soldiers on foreign service.

57. Held on a reference from the Judge of Moradabad, that the provisions of Regulation 15, 1816, are applicable to Native officers and soldiers of irregular corps on service in Afghanistan, that is, on foreign service.—*Con* 1335, *West. C.* 28th April, *Cal. C.* 20th May 1842

The native invalid battalions are entitled to its benefit

58. The Native invalid battalions are considered within the description abovementioned, and consequently entitled to the benefit of the Regulation in question.—*Con* 264, 29th Jan 1817.

The pay of a sepoy cannot be attached to liquidate a decree against him.

59. With reference to your letter No. 216, of the 24th July last, I am directed by the Court to inform you that the pay of a sepoy cannot be attached in liquidation of the amount of a decree against him. The decree-holder is of course at liberty to proceed against the person or property of the sepoy, as in any other case.—*Con* 1175, *West. C.* 31st Aug., *Cal. C.* 21st Sept. 1834

## SECTION VI.

### *Actions for Debt against Persons in or connected with the Army.*

*For the Rules regarding the cognizance of suits against military men, vide Chapter I. Nos 411 to 416*

A military court of requests is a crown court, and can alone define the extent of its own jurisdiction

60. The Military Court of Requests being a King's court, constituted by an Act of Parliament, the Sudder court are not competent to determine the extent of its jurisdiction, which must be decided by the Military court itself under the laws enacted for its guidance.—*Con* 876, *West. C.* 26th March, *Cal. C.* 18th April 1834, par. 2.

Civil servants, merchants, and others residing within the limits of a cantonment are subject to military courts of request

61. The Court are of opinion that the civil servants of the Company, merchants, and others mentioned in paragraph 2 of your letter, (who reside within the limits of a cantonment, although totally unconnected with the army,) are under the terms of the Regulation subject

during their actual residence, to the jurisdiction of a Military Court of Requests, and to that of no other court, in all cases of personal action of debt ; they are consequently exempted from the authority of the Company's courts while so resident. —*Ibid*, par. 3.

62. And it is hereby enacted, subject to the aforesaid proviso, that within the territories of the East India Company actions of debt and other personal actions against Native officers, soldiers and other persons amenable to articles of war for the Native forces in the military service of the East India Company, or residing within any station or cantonment, and carrying on any trade or business in a military bazar, shall be cognizable before a Military court and not elsewhere, provided the value in question shall not exceed 200 rupees, and the defendant was a person of the description abovementioned, when the cause of action arose, and when the suit was instituted. Provided, that no suit shall be brought before any Military court under this Act to determine any dispute of caste or concerning any right to real property.—*Act XL 1841, Sect. 2.*

Actions against native officers, &c shall be cognizable before a military court if value does not exceed 200 rs. But disputes of caste and concerning real property not to be determined before military court

63. No process of arrest before judgment shall issue from any Civil court in any action against a person residing or carrying on any trade or occupation, relating to the service or supply to the troops at any house, shop, or fixed place within the precincts of a garrison, cantonment or military bazar, unless it be averred in the plaint that the cause of action exceeds sica rupees two hundred, or that the defendant though resident or carrying on such trade or occupation within the military limits is not registered, or that though registered he has not within the space of three months preceding, truly and bonâ fide exercised the occupation in respect of which he is registered within the limits; in all cases where such averment shall be made, the Judge issuing the process shall endorse upon it as the case may be "cause of action above sica rupees two hundred," or "defendant not registered," or "defendant not entitled to privilege of registry," and shall sign the endorsement. All process so endorsed shall if the defendant be within the limits of the garrison, cantonment or military bazar, be delivered in the first instance to the commanding officer, and be executed through him as in other cases; but if the defendant be found without the limits of the garrison cantonment or military bazar, he may be arrested by the civil officer on process so endorsed, and in all cases of such arrests whether made within or without the limits, if at the trial the plaintiff shall not prove according to the purport of the endorsement, either that the cause of action exceed sica rupees two hundred, or that the defendant though resident or carrying on such trade or occupation as abovementioned within the military limits was not registered, or that though registered he had not during the space of three months preceding, truly and bonâ fide exercised the trade or occupation in respect of which he is registered within the limits, he shall be nonsuited with costs.—*Reg. 20, 1840, Sect. 24.*

No process of arrest before judgment to issue from the civil courts, unless in cases exceeding 200 Rs. Rules in cases exceeding that amount.

64. No person registered as attached to the bazar of a corps, and bonâ fide carrying on the trade or occupation in respect of which he is registered in the place allotted or ordinarily used for the bazar of the corps, shall be liable to be arrested on process before judgment out of any Civil court, for any cause of action not exceeding sica rupees two hundred. In all cases in which persons of this description are arrested by civil process,

Similar rules as to persons attached to the bazar of corps



it shall be declared in the plaint. that the cause of action does exceed sicca rupees two hundred, in which case the Judge shall endorse on the process "cause of action exceeding sicca rupees two hundred," and shall sign the endorsement; and if the plaintiff at the trial of the cause shall not prove a cause of action exceeding sicca rupees two hundred, he shall be nonsuited with costs; and in case any person registered as attached to the bazar of a corps, and bonâ fide carrying on the occupation in respect of which he is registered within the limits allotted, or ordinarily used for the military bazar, shall be arrested under a civil process, which is not so endorsed, the commanding officer, if he shall after due enquiry, be satisfied that such person was so bonâ fide carrying on the occupation, in respect of which he is registered within the limits aforesaid, shall make out and sign a certificate in the following form:— I ———, commanding officer of ———, do hereby certify that ——— of ——— was registered on the ——— day of ———, in the year ——— as a person attached to the bazar of the corps in the occupation of a ———, and that he did at the time at his being arrested on the ——— day of ——— last, actually and bonâ fide follow that occupation as a person attached to the bazar of the corps within the space allotted or ordinarily used for the bazar." Upon such certificate signed by the commanding officer being produced to the Judge who issued the process, he shall cause the same to be recorded in his cutcherry, and shall make an order for releasing the person arrested from confinement; but the plaintiff shall be at liberty if he thinks fit, to proceed in his action, and shall be bound to prove at the trial, either that the cause of action exceeds sicca rupees two hundred, or that the defendant was not registered as attached to the bazar of the corps, or that although registered he was not actually and bonâ fide carrying on the occupation in respect of which he was so registered at the time of the action brought, and in failure of such proof he shall be nonsuited with costs. —*Ibid*, Sect. 25

How process of arrest, either civil or military, executed within the limits of military stations

65. In all cases which it may be necessary to execute any process of arrest, criminal or civil, within the limits of a garrison, cantonment, military station, or military bazar (the process of the Supreme Court only excepted) the officers entrusted with the execution of such process of arrest, shall in the first instance carry the same to the commanding officer, or if he shall happen to be absent, to the senior officer actually present in the garrison, cantonment or station; and the commanding officer or such senior officer upon such process being produced to him shall back the same with his signature, and shall forthwith use his utmost endeavours to cause the person or persons named in such process to be discovered, and if within the limits of the garrison, cantonment, station or bazar, to be arrested and delivered according to the exigency of the process to the civil officer charged with the execution thereof, but nothing herein contained is to be construed to prevent the service by the civil officer in the usual way, of summonses, subpoenas, or other process of mere citation without arrest.—*Ibid*, Sect. 19.

Such rule not to extend to the service of process short of arrest

Commanding officers on special application or otherwise

66. The commanding officers of stations are hereby required to afford every protection to the officers of the Judges, Magistrates, and Justices of the Peace, in the discharge

of the duty entrusted to them, whether any special application shall have been made to them for such aid or support, or otherwise.—*Reg. 3, 1809, Sect. 3, Cl. 2.*

required to afford protection to officers of the civil authority, in the discharge of their duties.

67. The provisions of this Regulation respecting the trial of petty offences committed within the limits of garrisons, cantonments, military stations or military station bazars, and the provisions of this Regulation, respecting the execution of process of arrest before judgment against registered persons attached to station bazars, are to be considered as applicable only to those garrisons, cantonments and stations, the limits whereof shall be laid down in plans approved and confirmed by the Governor General in Council, in the manner described in Section 5 of this Regulation; and they shall be in force in such garrisons, cantonments and military stations respectively, from the time that the plans so approved and confirmed shall have been deposited at the head-quarters, and in the catcherry of the Magistrate, in the manner prescribed in Section 6. With regard to those garrisons, cantonments or stations to which it may not be found practicable to assign local limits for the purposes of this Regulation, special provisions will be made hereafter, according to the circumstances of each case: in the mean time the provisions of Regulation 3 of 1809, are to be considered as in full force with respect to those garrisons, cantonments and military stations, and the station bazars attached thereto.—*Reg. 20, 1810, Sect. 20.*

To what description of military stations those rules are for the present confined.

68. Whenever an award of a Military court, acting under the provisions of Section 22, Regulation 20, 1810, against a defendant being a Native of the description mentioned in the said section, shall decree a sum beyond the extent of the property which such defendant may be found to possess within the reach of military authority, but not exceeding two hundred rupees, it shall be competent to the Judge of any zillah or city to give effect to such award, by levying the amount, or a portion of it, from any of the defendant's property which may be pointed out within the jurisdiction of the said zillah or city, on being furnished with a copy of the award, and a certificate from the commanding officer of the district, of the extent of the amount unrealized; and the zillah or city Judge to whom such application shall be made within the period of three months, from the date of the award, is hereby authorized and directed to proceed to execute the same in the mode prescribed by the existing Regulations for the sale of property, in the execution of decrees when passed by a Zillah or City court.—*Reg. 5, 1828, Sect. 2.*

Judges of zillah & city courts to give effect to awards of military courts in certain cases.

69. Property situated in a cantonment cannot be transferred contrary to the rules in force within such cantonment.—*Rep. Sum. Cases, 9th Aug. 1817.*

Property in a cantonment cannot be transferred contrary to the rules in force there.

## SECTION VII.

### *Suits instituted against Persons in the Salt Department.*

70. Persons instituting suits in the Dewanny adawlat against any of the officers of the Agents, or any individuals under engagements on account of the salt manufacture, and employed therein, are to specify their being so engaged and employed. If the no-

Rules to be observed on the institution of suits against such officers.

tice or summons is to be served during the months of Sawun, Bhadoon and Assin, it shall be served on the defendant, in the same manner, as on other defendants not employed in the salt manufacture. If the notice or summons is to be served between the commencement of Kartick, and the end of Assar, the notice or summons with a copy of the complaint shall be enclosed in a sealed cover, addressed to the Agent, and superscribed with the official signature of the Judge or Register. It shall be at the option of the Agent to execute, or to cause one of his officers, or any other person, whom he may think proper, to execute the security required from defendants, in cases in which such security may be considered necessary, or to leave the party to find the required security; and in the latter case, and in the event of the summons being committed to an officer of the court, if the officer shall entertain doubts of the responsibility of the surety so offered, and the Agent shall declare such surety to be responsible, the officer shall accept the security. If a requisition of security for appearance should be made, and the Agent should not deem it expedient to order any of his officers or any other person to become security, and the defendant himself should not be able to find such security, as the Agent may deem responsible, the Agent is to cause the party summoned to accompany the officer of the court to the court, or if the summons shall not have been committed to the charge of an officer, he shall cause him to be conveyed before the court.--*Reg. 10, 1819. Sect. 21, Cl 1.*

Superintendants to furnish to the zillah courts, lists of chowkies and officers employed at them

71. Superintending officers of the chowkies are to be careful to keep the several Judges and Magistrates, in whose jurisdictions the chowkies are stationed, furnished with lists of the chowkies, pointing out their situations and specifying the names of the officers attached to them, and in the event of any change taking place in the situation of a chowkey, or among the officers belonging to a chowkey, the same shall be immediately notified to the Judge.--*Ibid, Sect. 23.*

Rules to be observed on the institution of suits against such officers

72. Persons instituting suits in the Dewanny adawlut against any of the officers of the salt chowkies, are to specify the nature of their employment, and the notice or summons to be served upon such officers, with copy of the complaint against them, shall be enclosed in a sealed cover to the Superintendent of the chowkey to which the party may be attached, who will, without delay, cause the notice to be served in the regular manner, or send persons to take charge of the chowkey, and cause the party when summoned to accompany the officer of the court to the court, or if the summons shall not have been committed to the charge of an officer, he shall cause such party to be conveyed before the court.--*Ibid, Sect. 24.*

Ditto when summoned as witnesses

73. Requisitions to officers of the salt chowkies to appear as witnesses shall be served in the manner above prescribed in Section 24 of this Regulation, but the Judges are to be careful not to summon such officers, excepting when their attendance shall be necessary, and on their appearance they are to have them examined and dismissed with all practicable despatch, so that they may be absent from their chowkies as short a time as possible.--*Ibid Sect 27*

74. The Salt Agents are to empower their respective assistants, whether covenanted servants of the Company or European uncovenanted assistants, and also an authorized vakeel of the Dewanny adawlut, or any other person whom the Agents may think it proper to station at the place, at which the court may be held, to execute the securities specified in the preceding clause for persons employed in the salt manufacture. The Agents are to be careful to keep the Judge furnished with a list of the persons so empowered, specifying also the place at which they may usually reside, and Judges are authorized in instances in which they may deem it proper, either from the distance of the place of abode of the Agent, from the place at which the person to be summoned may reside, or other circumstances, to order the summons to be enclosed to one of the persons so empowered to become security, instead of transmitting it to the Agent himself under the first clause of this section- in which case such person shall proceed in the manner prescribed to the Agent, where the summons may be sent immediately to him. —*Ibid*, Sect. 21, Cl. 2.

Further rules with regard to the mode of furnishing security for such persons.

75. If a suit shall be preferred in the Dewanny adawlut against any of the officers of the Agents, or any person under engagements on account of the salt manufacture, and employed therein, without specifying that he is so engaged, and employed, and a notice or a summons shall in consequence be ordered to be served on him in the same manner as on other defendants, between the commencement of Kartek and the end of As-sur, the officer serving the notice or summons, on the circumstance of the defendant being so employed being notified to him by the Agent or any of his officers, or by the defendant himself, shall deliver such notice or summons to the nearest person empowered to execute securities, whether the Agent, or his covenanted or uncovenanted assistants, or the head officer of an aumung, who shall proceed in the manner prescribed to the Agent in clause first of this section. If an officer charged with a summons against any person of the above description shall receive the notification of the defendant being employed in the manufacture from the defendant only and shall entertain doubts of his being so employed; or if he shall not entertain any such doubts, but shall apprehend that he will abscond whilst he (the officer) is repairing with the summons to the person empowered to execute the securities, he shall in such case, carry the defendant with the summons to the person so empowered, and shall not release his person until the required securities have been executed. —*Ibid*, Cl. 3.

Date when a notice or summons may be served in the ordinary form on such persons.

76. The Judges and Magistrates are empowered in particular cases in which it may appear to them indispensably necessary for the purposes of justice, to order the personal attendance of any Native officer or person in any wise concerned or employed in the salt manufacture, whether he may be a party or a witness in the suit or prosecution, at any time during the manufacturing season, notwithstanding any thing that may be said to the contrary in those clauses, and to cause process to be executed upon him for that purpose, in the same manner as upon other individuals; but in such cases, the Judges and Magistrates are to record on their proceedings, their reasons for deviating from the provisions contained in the said clauses, which are to be considered as the general rules for

Rules of process against such persons when charged with a bailable offence.

issuing and executing such notices, summonses and warrants ; and in the notice, summons or warrant, they are to specify that it has been specially ordered to be so executed in virtue of the discretionary power vested in them by this clause, and they are moreover strictly enjoined to refrain from every unnecessary exercise of that power.—*Ibid*, Cl. 9.

Decrees against native officers and persons employed in the salt manufacture, how to be executed

77. If a decree shall be passed against a Native officer, or any person under engagements on account of the salt manufacture, and actually employed in it, and the court shall order the decree to be enforced at any time between the commencement of Kartick and the end of Assar, recourse may be had to his property, but his person shall not be attached or molested during that period. At the close however of the manufacturing season, the Agent shall be responsible for his appearing before the court, if required, but the salt, or the advances, or any implements belonging to the Company, which may be in his hands shall not be liable for the decree. But during Sawun, Bhadon and Assin, and also in the manufacturing season, if the Salt Agent shall signify to the Judge, through an authorized vakeel of the court, that their attendance is not required in the business of the manufacture, the persons of all such individuals so employed, shall be equally liable with their property for decrees.—*Ibid*, Sect. 22.

Decrees against chowkey officers how to be executed

78. If a decree shall be passed against an officer of a salt chowkey, and the court shall order the decree to be enforced, recourse may be had to his property ; but his person, if attached, shall not be removed without previous notice being given to the party under whose superintendence the officer acts, that another person may be immediately deputed to take charge of his place during his absence.—*Ibid*, Sect. 29.

Certain rule enacted

79. From the beginning of Kartick to the end of Assar, no person under engagements and employed in the salt manufacture, shall be liable to be arrested for a demand of rent, nor to be summoned to the entcherry of any proprietor, or farmer of land, or any person holding, or entrusted with the collection of the rents, or revenue of lands, or the management thereof, under any pretence whatever. If any such proprietors, farmers, or other persons aforesaid, shall have a claim for, or relating to rent on any persons so engaged, and employed, and shall be desirous of enforcing it during the period abovementioned they shall either distrain for the amount under the existing Regulations for levying distress for the recovery of arrears of land rent, or sue the stated defaulter for it in the Dewanny adawlut, or state their claim in writing to the Agent, who, if he shall deem it expedient so to do, shall cause the stated defaulter to satisfy it himself, and stop the amount by kistbandy from his future advances ; so that his labour on account of the manufacture may not be interrupted. If the claimant shall prefer applying in the first instance to the Agent, and he shall not afford satisfaction for the claim, the claimant must distrain, or commence a civil prosecution as above pointed out. But the salt advances, or implements belonging to the Company in the hands of the defaulter, shall not be held liable for the claim, nor shall they under any pretence whatsoever, be distrained, seized, sold or otherwise disposed of by the claimant, or by the court, in satisfaction of his demand.—*Ibid*, Sect. 20. Cl. 2.

## SECTION VIII.

*Suits by Persons in the Salt Department for Compulsion, or for Extortion.*

80. If a Salt Agent shall compel, or use any means, or cause any of his officers or others, to compel any molungee, beoparree, or other person to receive advances, or to contract for, or engage in the provision, manufacture, or transportation of salt, the Judge of the Dewanny adawlut, on proof of the charge to his satisfaction, shall adjudge the contract or engagement null and void, and direct the complainant to be discharged, and cause the advances, if any should have been made, to be returned by him, and award such costs and damages against the Agent, as may appear to him equitable. The Agent so offending shall moreover be liable to be dismissed from his office by the Governor General in Council.—*Ibid.* 10, 1819, *Sect.* 8.

Redress how to be afforded in cases of compulsion by a salt agent.

81. If the assistant to a Salt Agent, whether a covenanted servant of the Company or an European not in the Company's service, or any Native officer attached to a Salt Agency, shall compel, or use any means, or cause any inferior officer or others to compel any molungee, beoparree or other person to receive advances, or to contract for or engage in the provision, manufacture, or transportation of salt, he shall on conviction before the Dewanny adawlut, be made to pay to the complainant a sum equal to the amount of the whole of the advances which such complainant would have been entitled to receive, had he voluntarily entered into the contract, or engagement, with any further compensation to which he may appear entitled, and the complainant shall be immediately discharged, and any advances that he may have received shall be taken back from him. In the cases above specified, the party offending shall be liable to be dismissed from office by the Governor General in Council, the Board of Customs, Salt and Opium, or Salt Agent, according as the appointment or removal of such officer, may rest with the one or the other of the said authorities; and in all such cases it shall be the duty of the court before which such charge may be proved against any Agent, assistant to an Agent, or officers aforesaid, to report the circumstance to the aforesaid board.—*Ibid.* *Sect.* 9.

Redress how to be afforded in cases of compulsion by European assistants, or native officers of salt agency.

82. Covenanted and uncovenanted assistants, and head officers of aurungs, shall be held responsible for any compulsion that may be used for the purposes specified in the foregoing section by the *gomashahs*, *peons* and other persons subject to their authority, unless it shall appear that it was had recourse to without their knowledge or connivance, and that they afforded all practicable redress immediately on being apprized of the circumstance: where persons subject to the authority of such assistant or head officer shall be convicted of using such compulsion without his knowledge or connivance, besides dismissal from office, they shall be liable to the same penalties as are prescribed in the preceding section for cases in which the Native officers attached to a Salt Agency may be convicted of using compulsion.—*Ibid.* *Sect.* 10.

Such assistants and head officers of aurungs how far responsible for acts of compulsion on the part of officers subject to their authority

83. If any contractor, molungee or beoparree, having received advances or entered into engagements for the provision of salt, shall be convicted before the Dewanny

Prohibition against compulsion by contractors, molungees and beoparrees.

adawlut of compelling, directly or indirectly, any labourer, or other person, to receive advances, or to engage in the manufacture, he shall on conviction before the Dewanny adawlut, be liable to the same penalty, with the exception of dismissal from office, as is directed to be inflicted in the cases specified in Section 9 of this Regulation. And that no contractor, molungee or beoparree, may plead ignorance of the above rule, a clause to the effect thereof shall be inserted in their contracts—*Reg. 10, 1819, Sect. 11.*

Courts how to proceed on complaints of molungees & others, that they were compelled to enter into engagements.

84. To prevent persons who may voluntarily receive advances and give a receipt for the amount, afterwards declaring that they were compelled to receive the advances, (or in order to get released from their engagement,) the courts, in the event of any complaint being made to them by or on behalf of a molungee, labourer, or other person, that he was compelled to receive advances, are directed, excepting in cases in which they may have full and satisfactory evidence before them that compulsion was used, to consider the receipt as evidence *prima facie* of the advances having been voluntarily received, and they shall not release the complainant from his engagements, or prevent his proceeding to the place of manufacture, should he not have proceeded there, nor bring him from thence, should he have repaired thither, until they shall have completed the trial of the complainant, and shall be satisfied that the engagement was compulsive, and repugnant to this Regulation. The Agents are to apply this rule in similar complaints that may be preferred to them.—*Ibid, Sect. 11*

The same course to be followed by salt agents

Reg. 9, 1808, sec 38, does not apply to native salt officers, but they are punishable for extortion under the general regulations.

85. The provisions of Section 38, Regulation 9, 1808, which declare Native officers of the custom department, subject for extortion to imprisonment, fine, and corporal punishment, are not applicable to Native officers of the salt department, who however are of course amenable for acts of extortion under the general Regulations. — *Con. 476, 8th April 1828.*

## SECTION IX.

### *Appeal to the Civil Courts on the Confiscation of Salt.*

Proprietor may sue in the civil court, and stay the order for confiscation on giving good security

86. Provided always, that if the proprietor of such confiscated salt, being dissatisfied with the order of confiscation, shall immediately give responsible security for the amount of the penalty, and farther, within a period of one month, shall institute a regular suit in the Dewanny adawlut against the officer who may have seized the salt, for damages: in such case the Magistrate shall suspend the execution of his order, and stay all further proceedings; but if, at the expiration of one month from the date of the order of confiscation, no suit shall have been instituted by the proprietor of the salt, the Magistrate is without further delay to levy the penalty from his security, and otherwise to carry the order of confiscation into full effect.—*Reg. 10, 1819, Sect. 80.*

Security may be dispensed with at the discretion of the magistrate.

87. In all cases where any proprietor of salt confiscated for being adulterated with kharee noon, or any of the substances aforesaid, may be unable to give the above security for the amount of the penalty, the Magistrate, upon his being satisfied of the inability of the party to give the security, is hereby empowered to dispense with

security ; taking from the party bail for his appearance only, to abide the issue of the suit ; or in the event of the suit not being instituted within the period prescribed by the preceding section, to answer in his own person the amount of the penalty ; and in the mean time the Magistrate shall keep the salt under attachment.—*Reg. 10, 1819, Sect. 81.*

88. In all cases in which it may appear that an attachment, or seizure has been improperly made by an officer of Government, the proprietor of the salt shall be entitled to recover full damages for all the loss and expence to which he may have been subjected in consequence, by a regular suit in the Dewanny adawlut.—*Ibid, Sect. 82.*

Damages to be awarded in cases of improper attachment of seizure

89. But should it appear to the court that there was no just ground for objecting to the order of confiscation, and that the suit has been instituted merely with a view to create delay or for vexatious purposes, it shall be at the option of the court to impose a fine of fifteen rupees per mound instead of ten rupees as prescribed in Section 77 of this Regulation : the decision in such case as well as in all cases in which a regular suit may be instituted, being subject to the existing rules for appeals to the superior courts.—*Ibid, Sect. 83.*

And fine may be imposed if the suit appear frivolous or vexatious.

90. In the event of a regular suit being instituted for the purpose of setting aside the order of confiscation, the salt shall be held under attachment by the court until a final decision may be passed in the cause.—*Ibid, Sect. 84.*

Salt to be held under attachment pending the suit.

91. Where the revenue officers illegally confiscated salt, the owner recovered, as damages, the prime cost, boat hire, and expected profits.—*S. D. A. Sel. Rep. 23d Feb 1831, vol. 5, p. 90.*

The owner of salt illegally confiscated, recovered, as damages, every thing

92. A, the gomastah of a Salt Agent, had illegally and without official authority, attached and held possession of a salt *golah* in charge of an inferior officer, B. The Sudder dewanny adawlut affirm the Zillah court's award of the claim for deficiency proved against A. in the first instance, and ultimately against B. and his surety ; who were not held discharged by the tort of A.—*S. D. A. Sel. Rep. 10th Dec. 1832, vol. 5, p. 212.*

Decision of the S. D. A., in case of attachment of a salt *golah*

93. The Circular order of a Board imposing rules of practice upon its subordinates, beyond the requirements of law, cannot be pleaded in bar of a legal penalty.—*Rep. Sum. Cases, 17th March 1846, p. 78.*

The cir. order of a board, cannot be pleaded in bar of a legal penalty.

94. Scraping a salt *chur*, with a view to collect salt earth, is not an offence punishable under the provisions of Section 3, Regulation 10, 1826.—*Con. 1211, West. C. 19th April, Cal. C. 10th May 1839.*

Scraping a salt *chur* is no legal offence

95. The Court of Nizamut adawlut have had before them your letter, dated the 26th ultimo, requesting to know what process should be observed for the realization of the fine, under Section 12, Regulation 1, 1824, on persons illicitly cultivating salt *churs*.—In reply, I am desired to acquaint you, that the Regulation above quoted being silent as to the mode in which the fine is to be levied, the Court are of opinion, that it should be commuted to imprisonment under the rule contained in Section 3, Regulation 14, 1797, and Section 19, Regulation 9, 1807, whenever the party on whom the fine may be imposed shall neglect to pay it.—*Con. 388, 3d June 1825.*

Mode in which fines for illegally cultivating salt *churs* should be realized.



A *chellan* is an equally valid instrument for the protection of the salt as a *rowannah*.

96. Sections 36 and 41, Regulation 10, 1819, clearly recognize a *chellan*, granted for a portion of a lot of salt for which a *rowannah* may have been taken out, as an instrument equally valid as a *rowannah* to protect the salt covered by it from confiscation. A different construction would warrant the confiscation of a boat laden with salt, the owner of which, trusting to the validity of the *chellan*, might have hired it without any design to aid in a smuggling transaction. Nor can this construction enable the holder of a *rowannah* to transport a greater quantity of salt under its cover than the quantity specified in it; as an endorsement on the *rowannah*, showing the quantity of each portion of the lot described in it, for which a *chellan* may be granted, is all that is required to prevent its serving to protect more than the portion remaining entitled to its protection.—*Con.* 653, 12th Aug. 1831.

The *chellan* must be produced on demand, on pain of confiscation.

97. Section 3, Regulation 9, 1806, requires the *immediate* production, to the officer of search, of the *chellan* covering the salt laden on a boat, on pain of confiscation, and the court cannot afford relief.—*S. D. A. Sd. Rep.* 23d Feb. 1831, vol. 5, p. 90.

## SECTION X.

### *Notice to be given of the Establishment of Illicit Works, and Penalty for not doing so*

Modifies cls 32 and 33, reg 10, 1819. Proprietors and farmers upon whose land there are salt works, and who work under contract with salt agent, must give notice of the same to officer at police, &c. within ten days, like notice to be given by persons employed in collecting land revenue of mahal on part of govt, or of court of wards, &c. Omission to give notice subject to fine of 500 rs for every khalaria or salt work on lands. Fine recoverable by distress.

98. And it is hereby enacted, in modification of Clauses 32 and 33 of Regulation 10, 1819, of the Bengal code, that it shall be the duty of every party under direct engagements with Government for the land revenue, either as a proprietor or farmer, and of every proprietor of lakhiraj lands upon whose zemindary, farm or lakhiraj estate there shall be any works producing salt, otherwise than under contract with Salt Agent or on account of Government, to give notice of the same in writing to the nearest public officer of Police or land revenue or of the salt department, within ten days from the date on which the works were first prepared; and in like manner it shall be the duty of every person employed in the collection of the land revenue of any mahal on the part of Government, or of the Court of Wards, or of joint proprietors, to give like notice in respect to salt manufactured on the lands under their management; and every such proprietor, farmer, proprietor of lakhiraj estate or manager, who shall knowingly omit to give such notice, shall be liable on conviction before the Judge of any zillah or city to a fine of 500 rupees, for every khalaria or salt work established on his lands; and such knowledge shall not be required to be established by direct proof, but may be inferred from circumstances at the discretion of the Judge deciding the case, and any fine that may be adjudged under this section, shall be recoverable by distress and sale of the goods and chattels of the offender, or by process of execution taken out by any Salt Agent or Superintendent of chowkies in the manner provided for decrees of the Civil court.—*Act XXIX.* 1839 *Sect.* 27

The judge's order cannot be contested by a regular action

99. The order of the zillah Judge under Section 27, Act XXIX. of 1838, imposing a fine on a landholder for omitting to give notice of the establishment of illicit salt works on his estate, cannot be contested by a regular action.—*Rep. Sum. Cases*, 21st Nov. 1842, p. 41.

An appeal from the

100. Held, that an appeal from a Judge's order, under Section 27, Act XXIX. 1838, in

inflicting a fine on a landholder for permitting the manufacture of contraband salt on his estate, judge's order can be admitted only on special grounds.—*Rep. Sum. Cases, 13th July 1841, p. 14.*

101. A zemindar does not relieve himself from liability to fine under Section 27, Act XXIX. 1838, for the erection of illicit khalarces on his estate, by giving his estate in farm.—*Rep. Sum. Cases, 6th Oct. 1841, p. 19.*

A zemindar is liable under the above section after he has farmed his estate

102. It is not competent to a Civil court to reduce the penalty prescribed by Section 27, Act XXIX. of 1838, to be levied from landholders and others for omitting to give notice of the establishment on their lands of illicit khalarces or salt works.—*Rep. Sum. Cases, 6th Dec. 1842, p. 41*

The civil court cannot reduce the penalty prescribed in the above section.

103. The penalty prescribed by Section 27, Act XXIX. 1838, in cases of landholders neglecting to give information of the establishment of illicit salt khalarces on their estates, is personal, and cannot be levied from the heirs of the negligent party.—*Rep. Sum. Cases, 16th May 1843, p. 49*

The penalty is personal, and cannot be levied from the heirs.

104. If only one or some of the sharers of an estate have been prosecuted by the salt officers under Section 27, Act XXIX. 1838, for neglecting to give information of illicit salt works on their estate, the Judge should not originate any charge against the other sharers: each sharer prosecuted by the salt officers is liable on conviction, to the full penalty prescribed.—*Rep. Sum. Cases, 18th July 1843, p. 52*

If only some sharers be prosecuted under that section, the judge should not originate charges against the other sharers

105. A conviction under Section 27, Act XXIX. 1838, is appealable to the Sudder Deputy Adawlat only on special grounds as prescribed by Section 32 of the Act. A conviction under the for a named section is not vitiated by the omission to hold the local investigation prescribed by Section 99, Regulation 10, 1819.—*Rep. Sum. Cases, 11th May 1847.*

A conviction under sec 27, is not vitiated by omitting to hold the local investigation.

## SECTION XI.

### *Realization or Remission of Fines in the Salt Department—Interference of the Civil Courts.*

106. Petitions, and other papers presented in suits, informations and complaints, preferred under this Regulation before a Salt Agent, or superintending officer of salt chowkies, as well as all papers filed in the Courts of judicature in cases brought before them under the provisions hereinafter contained, shall not be required to be written on stamped paper, and all engagements contracted between Government, or its officers, and individuals, under this Regulation, shall be received and admitted in evidence in the different Courts of judicature, and by the Salt Agents and superintending officers of salt chowkies although not written on stamped paper.—*Reg. 10, 1819, Sect. 98.*

Petitions and papers in cases connected with this regulation before salt agents and superintendants need not be written on stamped paper, nor in cases before the courts of judicature under the following provisions of this regulation.

107. Whenever a penalty or fine may be adjudged against any person under the provisions of this Regulation, [viz Regulation 10, 1819,] it shall be competent to the officer or authority adjudging the same, in case the amount be not discharged, to award a period of imprisonment in commutation, according to the following scale, in addition to such imprisonment as such officer or authority may be specially empowered to adjudge.

Fines or penalties adjudged under this reg commutable to imprisonment according to specified scale

If the amount of the fine or penalty do not exceed fifty rupees, the term of imprisonment to be awarded in commutation shall not be less than fifteen days, and not more than one month. If the amount of the fine or penalty exceed fifty, or be less than one hundred rupees, the term of imprisonment to be awarded in commutation shall not be less than one month, and not more than two months. If the amount of the fine or penalty exceed one hundred rupees, and be not more than rupees five hundred, the term of imprisonment to be awarded in commutation, shall not be less than two months, and not more than four months. If the amount of the fine or penalty exceed five hundred rupees, the term of imprisonment to be awarded in commutation, shall not be less than four months, and not more than six months.—*Reg. 10, 1819, Sect. 110.*

Imprisonment can only be awarded in commutation of fine

108. The principle of Section 110, Regulation 10, 1819, is that imprisonment can only be awarded in commutation of fine.—*Rep. Sum. Cases, 12th Aug. 1845, p. 71.*

The fine should be in proportion to the quantity of salt seized, and not the number of persons engaged in the transaction.

109. The Court of Sudder dewanny adawlat have had before them your letter, dated the 18th instant, and its enclosures, submitting the case of certain individuals seized with illicit salt, and soliciting the opinion of the Court relative to the intent and meaning of Section 67, Regulation 10, 1819.—In reply I am desirous to acquaint you that the Court are disposed to be of opinion, that under the rule above cited, the fine should be in proportion to the quantity of illicit salt seized, and not according to the number of persons engaged in the illicit transaction.—You are not however, to consider this construction as operating to prevent the exercise of your own discretion, or to exempt you from an adherence, in the particular case, to the rules prescribed for your guidance in the Regulation cited by you.—*Con. 471, 22d Feb. 1828.*

Particular rules regarding the realization of fines

110. Fines not exceeding 50 rupees must be made commutable by imprisonment, and the orders executed by the confinement of the individual for the prescribed period, unless the fine be paid in the interim, when the party is entitled to his discharge. If the fine exceed 50 rupees but be less than 400 rupees, and the order contain no provision for commuting the same to imprisonment, in default of payment the Judge must proceed to realize the fine exactly in the same manner as he would do in execution of a decree of his own court of the same amount as the fine imposed, taking care that the term of imprisonment in no case exceeds the scale laid down in Section 110, Regulation 10, 1819.—*Con. 1374, Cal. C. 27th Jan., West. C. 17th Feb. 1843.*

The fines for a breach of the salt laws commutable to term of imprisonment

111. The fines imposed for a breach of the salt laws are commutable to a term of imprisonment. If the fine be paid before the defendant is committed to jail, the case is concluded. If forthcoming after confinement, the case is also disposed of and the prisoner must be released. If the fine be not paid, the person fined must undergo the prescribed period of imprisonment in commutation, and the levy of the fine is then barred, that is, the fine is not demandable after the imprisonment has been undergone and the party released.—*Con. 1135, Cal. and West. C. 2d March 1838.*

Salt agents and superintendants how to proceed with persons who may not pay fines not exceeding fifty rs adjudged against them

112. In cases in which a Salt Agent or Superintendent of salt chowkies shall adjudge any person to pay a fine not exceeding fifty rupees, if the fine be not immediately paid he shall send the party to the Judge of the zillah or city within the jurisdiction of which the offence may have been committed, with a roobukaree stating the purport of the order passed against the person in question, and the Judge shall on those grounds, give the necessary directions for the execution of the order in the manner prescribed for the exe-

execution of orders and decrees of court, and shall transmit the fine when levied to the treasury of the Agent, or Superintending officer of salt chowkies; provided, that in all such cases the roobukaree of the Salt Agent or Superintendant of salt chowkies, shall specify the period of imprisonment to which the party shall be subject, in the event of the fine adjudged by them not being paid.—*Reg. 10, 1819, Sect. 111.*

113. In all cases in which the quantity of salt proposed to be confiscated shall exceed twenty maunds, or in which the Salt Agents, or Superintendants of salt chowkies shall consider any person liable to pay a fine exceeding fifty rupees, he shall send his proceedings to the Judge of the zillah or city in which the offence may have been committed, or the salt seized, in order that the final award may be made by that authority. The parties in such cases shall, if declared by the judgment of the Salt Agent or Superintendant to be liable to any specific fine or term of imprisonment, be sent over under custody of peons, and the Judge shall on their arrival pass such order for the holding them to bail or otherwise securing their being in attendance, to abide the final award, as he may deem proper.—*Ibid, Sect. 112.*

In what cases the final award to be passed by the judge.

114. It shall be the duty of the Judge to have every case so forwarded to him by the salt officers brought to a hearing on the first day of his holding the Civil court, after the arrival of the proceedings and parties; and after having duly considered the proceedings of the Salt Agent and Superintendant and heard any thing the party may desire to urge in his defence, the Judge shall be competent to pass an immediate order either confirming the award of the salt officers (if the investigation on which the same may be founded shall appear to him complete, and the award passed thereon just and proper,) or modifying the said award (in case of any irregularity appearing on the face of it,) or reversing it (if in his opinion contrary to or not supported by the evidence and facts of the case as borne on the proceedings) or to institute a fresh investigation, and summon any further evidence, or to direct the reattendance of the witnesses previously examined, as well as to call for any explanations from the officers or parties concerned that he may deem necessary.—*Ibid, Sect. 113.*

Such cases to be brought to an early hearing—judge how to proceed.

115. The Court of Sudder dewanny adawlut have had before them your letter, dated the 15th instant, requesting their opinion on certain points connected with the construction of Regulation 10, 1819.—In reply to your first question, I am desired to communicate to you the opinion of the Court, that in cases forwarded to the Judge by the salt officers, under the 113th section of the enactment above quoted, regarding illicit manufacture of salt, &c. the person accused is at liberty to employ a *vakeel*, and to put in a written defence, if he deem that course preferable to pleading personally; and that such written defence should be on stamped paper of the value prescribed for miscellaneous petitions presented in the Judge's court.—*Vol. 483, 23d May 1828.*

A person accused under sec. 113, may employ a vakeel, and put in a written defence, on stamped paper.

116. Two despatches of salt belonging to different merchants, and covered by separate rowannahs, having been weighed together, and declared liable to confiscation by the salt officers and zillah Judge under the provisions of Sections 41 and 113, Regulation 10, 1819, held by the Court of Sudder dewanny adawlut that the quantity belonging to each merchant ought to have been separately weighed; and the order for confiscation accordingly reversed. The Court

When two despatches of salt belonging to different merchants are confiscated, the quantity belonging to each should be separately weighed.

farther held that the salt darogah having examined the despatches of salt, endorsed the rowannahs, and allowed them to pass his station, acted irregularly in subsequently stopping them.—*Rep. Sum. Cases, 27th Jan. 1835, p. 5.*

The civil courts will not execute an award they deem illegal.

117. The Civil courts cannot be expected to execute awards which they consider illegal.—*Rep. Sum. Cases, 12th May 1845, p. 69.*

Mode of proceeding to compel attendance of persons. Warrant may be issued in manner provided by reg. 10, 1819.

118. And it is hereby enacted, in addition to the rules contained in Sections 111, 112 and 113 of Regulation 10, 1819, of the Bengal code, for the adjudication of cases of contravention of the laws enacted for the protection of the revenue derived from salt, that if the attendance of the parties charged with such offences cannot be obtained by reason of their failure to attend in person or by vakeel, after being served with a summons, or by reason of their evading process, the officer adjudicating any such case shall issue notice for the attendance of the parties accused in the manner prescribed in Section 102 of the said Regulation; and if the parties do not attend in person or by vakeel, within the time fixed by such notice, the officer adjudicating the case shall pass judgment thereon, under the said last mentioned section, in like manner as if the parties accused were present; and the officer so adjudicating any case *ex-parte*, may, at any time after such judgment, issue his warrant for the apprehension of the persons convicted for execution of the sentence, in the manner provided in Regulation 10 of 1819, of the Bengal code, and in this Act, for cases in which the parties were present: and, further, may at any time sue out process for levying the amount of fine adjudged, from any Civil court competent to execute its own decrees in the manner and form prescribed for the execution of the decrees of such Civil court under Section 30 of this Act.—*Act XXX. 1838, Sect. 29.*

The judge should afford his aid for apprehending offenders who have evaded the agent's process.

119. Regulation 10, 1819, apparently does not provide for cases wherein the defendants are absent, or against whom the Agent has recorded his opinion of "guilty" *ex-parte*, its provisions being confined to an indication of the course of proceeding to be followed by the Judge when the person of the defendant is produced: it is however the duty of the Judge to afford his aid to apprehend any offender who has evaded or resisted the Agent's process.—*Con. 483, 23d May 1828*

The agent has the same power for the apprehension of those charged by him with a breach of the salt laws as a magistrate.

120. Section 104, Regulation 10, 1819, gives the Agent the same powers for the apprehension of those charged by the Agent with offences against the Regulation, as the Magistrates are authorized to use, inasmuch as the general magisterial powers, vested in the Agents by the section cited, do not appear to be limited by any other provisions of the enactment.—*Ibid.*

In *ex-parte* cases referred to the city or zillah judge, the judge shall carry on proceedings under secs 111 to 113, reg. 10, 1819.

121. And it is hereby enacted, that when the officer holding proceeding in any case *ex-parte* as above provided, shall refer the case to the Judge of any city or zillah, in consequence of the amount of fine being such as the said officer is not competent finally to adjudge, the Judge of the city or zillah, to whom such case may be referred, shall issue such orders and institute such proceedings as are authorized by Sections 111 to 113 of Regulation 10 of 1819 of the Bengal code, in like manner as if the offenders were sent over with the case or were present to be heard in their defence; and wherever any fine may be adjudged by the zillah or city Judge, the same may be levied on the application

of the Salt Agent or Superintendant of salt chowkies, under the rules in force for the execution of the decrees of Civil courts.—*Act XXIX. 1838, Sect. 30.*

122. If the matter of action or amount of fine adjudged in any case so sent over by the salt officers shall not exceed the sum of five hundred rupees, or if the quantity of salt in jeopardy shall not exceed two hundred maunds of eighty-two sicca weight to the seer, any award passed by a civil Judge under the preceding section shall be final and conclusive, and subject to no appeal whatever. If the fine adjudged exceed five hundred rupees, or if the quantity of salt under question exceed two hundred maunds, an appeal shall lie to the Provincial court on the application of any party interested, or of the salt officers on the part of Government, such appeal to be brought forward by common motion in the court and to be decided thereupon; provided, however, that no such appeal shall be received, unless the application be preferred within the period of six weeks from the date of the decision passed by the zillah or city Judge.—*Reg. 10, 1819, Sect. 114.*

The award of the judge to be final in what cases.

123. And it is hereby enacted, in modification of Section 114, Regulation 10, 1819, of the Bengal code, that the zillah and city Judges shall pass final judgment in all cases referred to them for adjudication, when the quantity of salt to be confiscated shall exceed eighty maunds, or the fine imposed shall exceed 400 rupees; provided however, that there shall in all such cases be an appeal open to the Sudder dewanny adawlut, under the rules for the admission of special appeals in that court, upon any point of law, which may be ruled by a zillah or city Judge in any such judgment.—*Act XXIX. 1838, Sect. 32.*

Modifies sec 114 reg 10, 1819. In confiscations exceeding 80 maunds, or fine of 400 rs, the judgment of zillah and city judges shall be final

124. I am directed by the Court to acknowledge the receipt of your letter, No. 3030, under date the 6th ultimo, relative to Section 114, Regulation 10 of 1819—Adverting to the terms of the first part of the section in question, which are positive and express, and distinctly declare that in cases of the nature of those therein described the award passed by the civil Judge, under the preceding section, shall be final and conclusive, and not subject to any appeal whatever, the Court are of opinion that no appeal would lie to the Sudder dewanny adawlut on the merits of the case—but upon the general principle laid down in your letter of the 25th November, 1836,\* they conceive that if the decree passed by the lower court in any case of the above description were manifestly illegal upon the face of it, or any such gross or glaring irregularity should have occurred in the course of the investigation as to vitiate the proceedings, it would be competent to the court, under its general powers of superintendence and control, to order the zillah Judge to revise his proceedings with a view to the correction of the error observable in them, and to proceed in the case according to law.—*Col. 1113, West. C. 17th Nov. 1837, Cal. C. 1st Jan. 1838.*

Orders passed by a judge under sec 114, reg. 10, 1819, imposing a fine for a breach of the salt laws are final

Cases in which the S. D. A. may order a judge to revise his proceedings.

125. Whenever any award may be passed by any zillah Judge under the rules of Section 113, the Judge shall, if the offence charged be established, proceed to levy the fine or fines, and to commit the parties to jail in pursuance thereto, under the general rules of the Regulations for the realizing of fines and executing decrees and orders of

Judge how to proceed after passing his award.

\* See Construction 1055, dated 17th October, 1836

court.—The Judge shall further communicate to the Salt Agent or Superintendent, whom it may concern, a copy of his final order with as little delay as possible, in order that any salt that may be held under attachment may be dealt with accordingly : provided however, that in any case in which an appeal may be preferred to a Provincial court, against the decision of a zillah or city Magistrate, if the party by whom such appeal may be lodged shall tender sufficient security for the performance of the order of the Provincial court, the zillah or city Judge shall suspend the execution of his decision, and shall instruct the Salt Agent or Superintendent to keep in deposit the salt which may have been adjudged contraband, until the final award of the Provincial court be passed. In all such cases it shall likewise of course be competent to the Provincial court to stay execution of the decree passed by the zillah or city Judge or to direct the officers in the salt department to keep in deposit the salt which may have been condemned, or the fine realized by the Zillah or City court.—*Reg. 10, 1819, Sect. 115.*

The fines for a breach of the salt laws are commutable to a term of imprisonment. Course to be pursued if the fine is paid before, or if confinement, and if it be not paid at all.

126. I am directed by the Court to state that, in their opinion, the salt authorities are empowered by Sections 110, 111 and 115, Regulation 10, 1819, to award either of two penalties viz. a fine, or imprisonment in commutation of the same, according to the scale laid down in Section 110. The Judge therefore who enforces the order in cases where the fine does not exceed fifty rupees, and judicially disposes of the cases where the fine exceeds that amount, must proceed to realize the fines by the usual process of execution. If the fine is forthcoming before the defendant is committed to jail, the case is concluded ; if forthcoming after commitment to jail, the case is likewise disposed of, and the prisoner must be immediately released ; if the fine be not forthcoming, the person fined must undergo the prescribed period of imprisonment in commutation, and the levy of the fine is then barred, that is, the fine is not demandable after the imprisonment has been undergone, and the party released —*Con. 1135, 2d March 1838.*

Parties who may be acquitted by the Judge, to be set at large, and salt adjudged not to be contraband, to be released.

127. If the award of the civil Judge shall acquit the parties charged, or adjudge any salt under attachment not to be contraband, the parties shall immediately be released and the attachment taken off : provided, however, that in case the quantity of salt under question shall amount to or exceed two hundred maunds, and an appeal should be lodged or proposed to be lodged by any party interested, the attachment of such salt shall not be taken off, until it shall be seen whether any appeal be so lodged, and what may be the award thereon. But if no appeal be lodged by any party within one month, attachment shall not continue longer —*Reg. 10, 1819, Sect. 116.*

Cases under this act shall be tried in manner prescribed in reg 10, 1819. Officer adjudicating to be guided by secs 100 to 116, same regulation. Judge & zillah judge to proceed in cases under this act as in other cases.

128. And it is hereby enacted, that cases arising out of this Act shall be tried in the same manner as is prescribed in Regulation 10 of 1819, of the Bengal code, for other cases of contravention of the laws for the protection of the revenue derived from salt, and the officer adjudicating the case shall be guided by the provisions of Sections 100 to 116 of that Regulation ; and the Judge of the city or zillah shall be bound to proceed in respect to persons sentenced to any fine or other penalty under the provisions of this Act, in the same manner, subject to the modifications and additions hereinafter provided, as is prescribed in respect to persons convicted of the offences and tried before the authorities specified and provided by the said Regulation.—*Act XXXIX, 1838, Sect. 26.*

129. In all cases in which any salt may be forfeited to Government under the rules contained in this Regulation, or in which any person may have been subjected to any of the penalties prescribed in Sections 31, 33, 34, 36, 38, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 66, 67, 68, 69, 70, 75, 77 and 86 of this Regulation, whether the final order shall have been passed by a Court of judicature, or by a Salt Agent or Superintendent of salt chowkies, it shall be competent to the Board of Customs, Salt and Opium, on application from the party, to call for a report of the circumstances of the case from the Salt Agent or Superintendent, by whom it may have been in the first instance investigated, in the manner heretofore practised in respect to seizure made by those officers, and to remit any portion of the fine or penalty which may have been imposed.—*Reg. 10, 1819, Sect. 117, Cl. 1.*

General power vested in the board to remit any portion of fines or penalties imposed under certain sections of this regulation

130. Provided also, that if in any case the Salt Agent or Superintendent of salt chowkies shall not deem it necessary to levy the full amount of the fine to which the party offending may be liable under this Regulation, and the said party shall submit himself by a written ikranamah to the decision of the Salt Agent or Superintendent, and shall pray to have judgment passed by those officers without reference to the Courts of judicature, then and in that case it shall be competent to the Salt Agent or Superintendent, with the sanction of the Board of Customs Salt and Opium, previously obtained, to pass a final judgment in the case whatever may be the quantity of salt or amount of fine.—*Ibid, Cl. 2.*

Under certain circumstances salt agents and superintendants with the sanction of the board may pass final judgment in cases of larger amount.

131. All fines which may be levied by any Judge of a Zillah or City court shall on realization be immediately remitted to the Salt Agent or Superintendent of salt chowkies, by whom the case may in the first instance have been investigated. The Superintendants and Salt Agents shall be guided in the distribution and payment of the rewards to which informers and subordinate officers of Government may be entitled under the rules contained in this Regulation, by such general or special orders as they may receive from the Board of Customs, Salt and Opium.—*Ibid, Sect. 118.*

Fines levied by judge to be remitted to salt agent or superintendant.

132. All applications preferred to the Board of Customs, Salt and Opium, for a remission or mitigation of any fine or penalty imposed by a Salt Agent or Superintendent or by a Court of judicature shall be written on stamped paper, the value of which shall be regulated as follows.—*Ibid, Sect. 119, Cl. 1.*

Applications for remission of fines to be written on stamped paper

133. In cases in which the quantity of salt adjudged contraband shall not exceed twenty maunds or the amount of the fine imposed fifty sicca rupees, the petition to the board shall be written on stamped paper of the value of two rupees.—*Ibid, Cl. 2.*

Value of stamped paper to be used

134. If the quantity of salt be more than twenty maunds, and do not exceed one hundred maunds, or if the fine imposed be more than fifty rupees, and do not exceed rupees two hundred and fifty, the petition shall be written on stamped paper of the value of four rupees.—*Ibid, Cl. 3.*

Idem

135. If the quantity of salt be more than maunds one hundred, and do not exceed two hundred maunds, or if the fine imposed be more than two hundred and fifty rupees

Idem



and do not exceed five hundred rupees, the petition shall be written on stamped paper of the value of six rupees.—*Reg. 10, 1819, Sect. 119, Cl. 4.*

Value of stamped paper to be used.

136. If the quantity of salt exceed two hundred mands, or the fine imposed five hundred rupees, the petition to the board shall be written on stamped paper of the value of eight rupees.—*Ibid, Cl. 5.*

Power of acquittal and release vested in salt agents and superintendants

137. Salt Agents and Superintendants of salt chowkies shall be authorized in all cases in which they may consider any charge preferred before them not to be substantiated, to acquit the party accused and to release the salt or other article which may have been seized, provided however, that if the party accused be an officer in the salt department, it shall be competent to the Board of Customs, Salt and Opium, at any time within three months of the date on which the order of the Salt Agent or Superintendant may have been passed, notwithstanding such acquittal, to direct the Superintendant or Salt Agent to transmit his proceedings to the zillah or city Judge, and the Judge shall proceed to investigate and decide on the case in the same manner as is above prescribed for cases referred to the court under the rules of Section 112 of this Regulation.—*Ibid Sect 120.*

Penalty on native officers of custom houses for connivance at the smuggling of salt

138. All Native officers employed under any Custom-house in the Ceded and Conquered Provinces, shall, on conviction to the satisfaction of the Board of Commissioners of having connived at the importation or transportation of any salt unaccompanied by a rowannah, be liable to a fine not exceeding six months' salary, such fine to be enforced by the Civil courts in the mode prescribed for the execution of decrees of court on production through the pleader of Government of an attested copy of the order of the board imposing such fine.—*Reg. 17, 1810, Sect. 5*

## SECTION XII

*Reference of all cases not provided for in the Salt Regulations to the Civil Courts.*

Cases not provided for by this regulation left to the ordinary jurisdiction of the courts of judicature

139. If any disputes should arise between a Salt Agent, a Superintending officer of chowkies, or any officer of Government and any person on any matter relative to the manufacture, provision, transportation, sale, purchase or possession of salt, not provided for in this Regulation either party is to be at liberty to apply for redress to the Courts of civil judicature, and the case shall be tried and decided upon under the general law Regulations, and usages ordinarily observed in the Civil courts.—*Reg. 10, 1819, Sect 126.*

## SECTION XIII.

*Rules for the Guidance of the Civil Courts in determining the Right of Public Officers to occupy Salt Lands and the Rate of Compensation.*

Rules for the adjustment of relative rights of the zemindars

140. An investigation having been instituted, under the orders of the Government General in Council, with a view, first, to determine the character of the remissions of the

land revenue allowed annually, from the time of the establishment of the present system of manufacture, to certain zemindars in the districts, comprised in the Salt Agencies of the 24-Pargunnahs, Jessore, Bhulooah, and Chittagong; and, secondly, to settle the claims of the zemindars, and the officers of the salt department at the Agencies in question, respectively on each other. The following declarations and rules calculated for all results of such investigation are hereby made and enacted, and the Courts of civil judicature, the officers of the salt and land revenue departments, and all other public authorities are to be by them guided in their determination of any question, that may arise as to the right of the officers of the salt department to occupy salt lands, or other lands, required for the purposes of the salt manufacture, and the rate of compensation to be paid for the same.—*Reg. 1, 1824, Sect. 9, Cl. 2.*

dars, and the officers of the salt department, founded on the result of a special enquiry.

141. The principle upon which remissions were originally made, from the jumma of zemindars, on account of khalarce rents, or the like, upon the assumption of the salt mehal, is hereby declared to have been to relieve those to whom they were granted from an assessment upon assets, which were transferred to Government on the establishment of the system of exclusive manufacture, with the rights and interests attached to the possession of the mehal.—*Ibid, Cl. 3.*

Khalarce remissions granted on the first establishment of the monopoly, on what principle allowed.

142. All zemindars or others, whose claims to remissions were allowed in the first instance, that is, on account of rents collected, by them, previously to the year 1188 B. S. shall be considered to fall within the class of land renters, who received an abatement of what they then ceased to collect, upon the principle above laid down, consequently it is hereby declared, that the sums remitted to them will be allowed in perpetuity.—*Ibid. Cl. 4.*

To be continued in perpetuity.

143. The Collectors of land revenue, and the board are prohibited henceforward from receiving any applications to obtain credit in the land revenue collections for any amount, claimed as due for khalarce rent, and from allowing of any abatement, or remission whatever from the land revenue jumma, except the specified remissions allowed on account of rents collected previously to 1188, or such other as may be hereafter ordered by the Governor General in Council.—*Ibid. Cl. 5.*

No further remissions or abatements on account of salt or fuel land to be allowed without authority of government.

144. Any land revenue engager, who may prefer a claim to receive rent for khalarces now worked, or for what may be so henceforward, or, for any that have been worked, and for which the rent of past years may be claimed to be due, shall be desired to make application to the Salt Agent to have the same adjusted on the principles declared hereafter.—*Ibid, Cl. 6.*

Claims by zemindars to khalarce rents how to be prosecuted.

145. The remissions allowed on account of rents collected previously to 1188, will still be retained on the revenue books, and will be carried to the debit of the salt department, but the levy of khalarce rents, bara kursa, or the like, from the molungees, will be entirely discontinued and the impost abolished from the commencement of the next year, save and except in cases wherein it may be otherwise specially ordered by the Governor General in Council, and henceforward any gomastah or other person attempting to

Collection of khalarce rents from molungees, unless where authorized by govt. to be discontinued.

enforce the impost, or demanding it in any shape without special authority from Government, shall, on proof of the fact before the Agent, be immediately dismissed.—*Reg. 1. 1824, Sect. 9, Cl. 7.*

Also tax on fuel.

146. The levy of Goorkatee by the officers of Government from the molungees, or of any other similar tax on the privilege of cutting jungle for fuel, to be used in the manufacture of salt, shall in like manner and with the like exceptions, be henceforward discontinued, whether the same be levied as an impost due to Government or otherwise.—*Ibid, Cl. 8*

Contracts for the manufacture of salt, what to specify.

147. All future contracts for the delivery of salt in return for advances received, shall, as far as practicable, specify distinctly the proportion of the aggregate price paid by Government, which may be allowed to cover the expence of fuel, and shall otherwise be rendered as specific as possible, with a distinct declaration of the amount to be paid to the molungees without impost or deduction on any account whatever, unless when otherwise specially authorized by Government.—*Ibid, Cl. 9.*

Agents to ascertain and record in whom the property of salt lands is vested

148. It shall be the duty of the Agents to ascertain and record at the time of making the advances next season, or as soon after as may be practicable, in whom the property of the khalarees and salt lands within their respective divisions, is vested.—*Ibid, Cl. 10.*

What lands to be considered as held by the officers of the salt department, free of rent under a perpetual tenure, and to be eventually liable to assessment by the revenue authorities

149. Salt Lands worked by the salt department, from the time of the assumption of the monopoly to the present day, or otherwise assumed and held before, and since the perpetual settlement (although originally belonging to an estate, for which a permanent settlement has been formed) shall be considered to be held by the officers of the salt department free of rent under a perpetual title of occupancy, and shall be considered to be, and to have been, liable to assessment by the revenue authorities, when relinquished by the officers of the salt department, in the same manner as if they had been farmed by an individual from Government, and had become open to re-settlement on the expiration of his lease.—*Ibid, Cl. 11.*

What lands to be considered as the property of govt

150. Salt lands, upon which salt works have been established, whether before or after the perpetual settlement shall, provided they have been worked for twelve years without claim on the part of any one to receive a rent or compensation for the use of the same, be deemed to be the absolute property of Government.—*Ibid, Cl. 12.*

What lands to be considered as belonging to individual proprietors.

151. Salt lands, upon which salt works were established after the perpetual settlement, and for the use of which a rent or consideration may be now paid to individual shall, until otherwise determined by a decree of court, be deemed to be the property of the said individuals, who for so long as the lands may be occupied by the salt department shall receive the same rent as they received for the use of the same in the past year. The rent is to be paid in money, and to be charged in the Salt Agent's accounts amongst other expences of the manufacture, without any demand being made on the contractors or molungees on account thereof unless otherwise specially authorized. This payment is to continue as long as the salt department shall retain possession of the lands, and to cease when those lands shall lose their saline quality, and be given up by the Salt Agents. Provided however, that nothing in this clause shall be construed to preclude

Rents how to be paid

the revenue officers from proceeding under the rules of Regulation 2, 1819, to assess the lands so occupied by the salt department, if the same be chargeable with revenue on account of the rent paid by that department, or the collections otherwise made by the party claiming to be proprietor.—*Reg. 1. 1821, Sect. 9, Cl. 13.*

152. If on a claim being preferred as above by a zemindar, the Collector shall be of opinion that the chur or salt land belongs to Government, he shall nevertheless proceed to adjust with the Agent the amount of rent, to be paid by the salt department for the use of it, and will in this case transmit his proceedings to the board for their decision on the zemindar's claim. Provided also, that in cases in which the Collector may decide in favour of the zemindars, it shall still be competent to the board to call for his proceedings, and to pass judgment on the claim, whenever from the representation of the Salt Agent, or otherwise they may see reason to think the decision of the Collector erroneous. The decision of the revenue authorities, when in favour of Government, will be of course liable to be contested by a suit in court. If the property in any land occupied, as aforesaid, shall be decreed to the claimant, he will become entitled to the rent with which the revenue authorities may have charged the salt department; and if he be dissatisfied with the rent so fixed the amount to be received by him shall be settled by arbitration in the manner heretofore provided for the adjustment of the compensation to be paid for land taken for public purposes. But in such case the possession of the Salt Agent shall not be disturbed so long as he shall discharge the rent awarded to the proprietor.—*Ibid. Sect. 10, Cl. 3.*

What course to be followed if land claimed by zemindars, shall appear to collector to belong to govt

153. The same mode of adjustment shall be observed in regard to all claims now pending for compensation for the use of salt lands but no remission of revenue shall be granted on this or the like account.—*Ibid. Cl. 4.*

Pending claims how to be adjusted,

154. No cultivation shall be allowed within the limits of any chur or other lands transferred to the salt department, unless with the permission of the Board of Customs, Salt and Opium, so long as the manufacture shall be continued on the same and it shall and may be lawful for the Salt Agent, and his subordinate officers to attach, confiscate and dispose of, as may be directed by the board, any crops grown on such land in contravention of this rule, and to require the Police to aid him in doing so. And any person illicitly cultivating, clearing, or ploughing such land, or doing any act preparatory to its cultivation and clearance, or causing another to do so, shall, on conviction before a Magistrate, be subject for every such offence to a fine not exceeding five hundred rupees, besides being liable in a civil action for any damage which the salt department may sustain. Provided however, that if any chur or other salt land occupied as above shall become, through natural causes, useless for the purposes of the salt department, the proprietor thereof shall be entitled to recover possession of the same on establishing the fact to the satisfaction of the Board of Customs, Salt and Opium, or by a regular suit in court, and on relinquishing the compensation paid to him by the Salt Agent for the use of the land.—*Ibid. Sect. 12.*

Cultivation of salt chur without permission of board of customs, salt and opium, prohibited

## SECTION XIV.

*Paupers—Plaintiffs and their Suits.*

No person to institute a suit in formâ pauperis, unless the court is satisfied, by examination on oath, &c. that there is probable cause for instituting the suit

155. It is hereby enacted, in addition to the rules already in force for instituting suits in formâ pauperis, that no person shall be hereafter entitled to institute any suit in formâ pauperis, in any Civil court of judicature within the territories subject to the Presidency of Fort William in Bengal, unless the court in which his petition may be presented shall, before granting such petition, be satisfied by the examination of the petitioner, or of his or her agents or witnesses, (which examination shall be taken on oath, or solemn affirmation in cases where a solemn affirmation may be received instead of an oath,) that there is probable cause for instituting the suit.—*Act IX. 1839, Sect. 1*

An application to sue as a pauper rejected, through the contradictory statements of the applicant

156. An application to sue in formâ pauperis rejected in consequence of contradictory statements made by the applicant, in regard to a point involved in the determination of the question as to whether there was probable cause for instituting the suit.—*Rep. Sum. Cases, 11th Jan. 1817*

A zillah judge cannot delegate to another the duty of making the enquiry contemplated in sec. 1, act 9, 1839

157. Held, on reference from the Judge of Seharunpore, that the zillah Judges cannot delegate to another authority the duty of making the enquiry contemplated by Section 1, Act IX. of 1839, in the case of parties applying to sue in formâ pauperis.—*Con. 1285, West. C. 7th Aug., Cal. C. 7th Sept. 1810.*

Circular of the 12th Nov. 1811, superseded, and the judges will in future conform to the following rules

158. The Court having had occasion to re-consider their printed Circular No. 170, dated the 12th November, 1811, in connection with the provisions of Section 8, Act XXV. of 1837, direct me to request that you will consider the Circular as superseded, and in future conform to the following rules in cases of the nature therein referred to.—*Cir. Ord. 11th Aug. 1813*

The judge will himself determine the existence of sufficient reasons for instituting a pauper suit

159. The Judge will himself decide, under the provisions of Section 1, Act IX. of 1839, as to the existence of sufficient grounds for the institution of a suit in the case of parties applying to sue in formâ pauperis, before referring the petition to the Principal Sudder Ameen for enquiry as to the pauperism of the plaintiff.—*Ibid, par. 1.*

The judge having decided this point under act 9, 1839 may leave the question of pauperism to be decided by the P. S. A., an appeal will lie to the judge

160. The Judge having decided the point under Act IX. of 1839, may, under Section 8, Act XXV. 1837, refer the petition to the Principal Sudder Ameen to dispose of as to the question of pauperism, and from his order, admitting or rejecting the application there will be an appeal to the zillah Judge.—*Ibid, par. 2.*

The provisions of act 9, 1839 are applicable to petitions to sue as a pauper, which were undecided on the date of that act

161. The Judge of zillah Goruckpore having enquired whether the provisions of the Act in question, are to be considered applicable to petitions to sue in formâ pauperis presented under Regulation 28 of 1811, but which remained undispensed of at the date of the promulgation of the recent enactment, the Court informed him that they consider his view to be correct, and that petitions to sue as paupers, remaining undispensed of at the date of Act IX. of the present year coming into force, must of course be considered subject to the rules provided by that law.—*Cir. 1229, West. C. 5th July, Cal. C. 2d Aug. 1839.*

When a judge has rejected a petition to sue as a pauper, he

162. The same Judge also enquired whether the application of a party to institute a suit in formâ pauperis having been rejected by the Judge, under the discretionary power vested in

him by the first section of the Act, in consequence of there not appearing to him to be probable cause for instituting the suit, the Judge is competent to receive one, of his own authority, to admit a second application from the same party relating to the same matter, either urging fresh grounds for the institution of his suit, or supplying any omission or correcting any thing which may have led to the rejection of his first application ; or whether such second application must be looked upon by the Judge as an application for a review of his first order, and treated accordingly.—To this the Sudder Court replied, that in their judgment he is not competent to admit, of his own authority, a second application after the rejection of the first, but must treat it as a petition for a review of his orders, and proceed accordingly.—*Con. 1229, West. C. 5th July, Cal. C. 2d Aug. 1839.*

cannot of himself admit a second application from the same party himself; he must consider it a petition for review of judgment.

163. Held by a majority of the Courts of Sudder dewanny adawlut that orders passed by the zillah Judges under Section 1, Act IX. of 1839, rejecting applications to sue in *forma pauperis* are appealable to the Sudder dewanny adawlut.—*Con. 1356, Cal. C. 22d July, West. C. 19th Aug. 1842.*

An appeal lies to the S. D. A. from an order rejecting a petition to sue as a pauper.

164. If lapse of time, not amounting to a period which would bar the institution of a suit on a full stamp, be the only ground for rejecting an application to sue in *forma pauperis*, it is insufficient.—*Rep. Sum. Cases, 22d April 1844, p. 58.*

Case in which lapse of time is an insufficient ground for rejecting a petition to sue as a pauper.

165. It is hereby declared, that the rules contained in this Regulation are intended to apply to regular suits and appeals only, and not to summary suits or summary appeals of any description ; neither are they intended to apply to pauper suits which may have been instituted either originally, or in appeal previously to the 1st of January, 1815 : such pauper suits and appeals are to be tried and determined in conformity with the rules heretofore in force.—*Reg. 28, 1814, Sect. 17.*

This regulation is not applicable to summary suits, or to suits of paupers instituted before the 1st of Jan. 1815.

166. On an application to sue in *forma pauperis*, the Judge should restrict his enquiry to the ability or otherwise of the applicant to pay the fees required : leaving the objections of the defendant to the plaintiff's statement of the cause of action to be offered in the answer to the plaint, as contemplated by Section 5, Regulation 13, 1808 [*By Act IX. 1839, the Judge is empowered to determine whether there is probable cause for instituting the suit before admitting the application.*].—*Con. 821, Cal. C. 30th Aug., West. C. 20th Sept. 1833.*

The judge should restrict his enquiry to the ability of the applicant to pay the fees required.

167. No person shall be hereafter entitled to institute or defend any suit in *forma pauperis* in any Civil court of judicature, unless the amount or value of the thing claimed shall exceed the sum of sixty-four rupees ; under this rule the Moon-siffs are hereby strictly prohibited from receiving or trying any suits which persons may wish to prefer to them in *forma pauperis*.—*Reg. 28, 1814, Sect. 3.*

No pauper suits to be admitted in which the value of the thing claimed shall not exceed 64 rs.

168. No person shall be hereafter permitted to institute a suit as a pauper in any Civil court of judicature, if the claim shall be for damages on account of loss of caste, slander, abusive language assaults, or personal injuries of any description ; or if the claim shall be for the possession or recovery of deeds or papers, or for fines, forfeitures or pecuniary penalties on account of any breach of the Regulations.—*Ibid, Sect. 4.*

Persons preferring claims of certain description not to be admitted to sue as paupers.

169. I am directed to inform you, that suits brought by khoudkhasht ryots for damages sustained in consequence of ejectments, and claims for damages arising from being deprived of

What suits of a khoudkhasht ryot may be received and tried in *forma pauperis*.

water for the purpose of irrigation, cannot be considered as coming within the prohibition contained in Clause 2, Section 5, Regulation 5, 1831, which applies only to suits for damages of a personal nature, and not to those for damage done to property ; such suits are therefore cognizable by Moonsiffs. With regard however to the first description of suits, I am directed to refer you to the Circular order of the 15th November, 1833, which declares such claims cognizable by the Collector under Regulation 8, 1831. In like manner the provisions of Section 4, Regulation 28, 1814, [with respect to claims of the above nature when instituted by paupers,] do not apply to suits of the nature described by you, the prohibition contained in them extending only to suits for personal damages.—*Con. 919, West. C. 5th, Cal. C. 26th Dec. 1834.*

Parties desiring to sue as paupers are to present a petition on stamped paper in person

Proviso

170. Whenever a party may be desirous of instituting an original suit as a pauper in any Zillah or City court, or in a Provincial court, he shall appear in person before such court, and shall present a petition written on the stamped paper prescribed for miscellaneous petitions in Section 18, Regulation 1, 1814, [*now*, Regulation 10, 1829 :] provided however, that if the party be a female of a rank and description which, according to the prejudices of the country, would render it improper to require her personal attendance in a Court of justice, such petition may be presented by a mooktar or agent duly authorized for that purpose.—*Reg. 28, 1814, Sect. 5, Cl. 1.*

The S D A may at its discretion allow any party desirous of applying to its court as a pauper, to appear by a mooktar or agent

171. It is hereby enacted, that the proviso contained in Clause 1, Section 5, Regulation 28, 1814, of the Bengal code, in regard to females of rank, shall be applicable, at the discretion of the Courts of Sudder dewanny adawlut of the Presidency of Fort William in Bengal respectively, to any party desirous of appealing in formâ pauperis to either of those courts.—*Act XIX. 1840.*

The alleged heir by will of a pauper plaintiff must apply *de novo* to sue as a pauper. What the petition is to contain

172. Held that the alleged heir by will, of a deceased pauper plaintiff, must apply *de novo* for permission to sue as a pauper.—*Rep. Sum. Cases, 1st March 1817.*

173 The petition shall contain a general statement of the nature and grounds of the demand, of the value of the thing claimed, according to the provisions of Section 14 Regulation 1, 1814, [*now* Regulation 10, 1829 ] of the name of the person or persons intended to be sued, and a schedule of the whole real or personal property, belonging to the petitioner, with the estimated value of such property.—*Reg. 28, 1814, Sect. 5, Cl. 2.*

Petitioner's examination to be taken on oath, with certain exceptions

174. The court in which such petition may be presented, or an authorized officer of the court, shall then proceed to take the examination of the petitioner, or if the petitioner be a female of the description mentioned in clause first of this section, the examination of her agent, with regard to the points above noticed, and shall question him particularly with respect to any real or personal property, which the petitioner may have recently sold, mortgaged, transferred, or otherwise disposed of; such examination shall be taken on oath, unless the court should in any particular instance, judge it proper to admit a solemn declaration in lieu thereof, under the provisions now in force, or any other provisions which may be hereafter enacted.—*Ibid. Cl. 3.*

A male native of rank desirous of suing as a pauper must appear in person; he cannot be examined by an agent.

175. A male Native of rank, wishing to institute a suit in formâ pauperis, must appear in person for examination under Clauses 1 and 3, Section 5, Regulation 28, 1814, and cannot be examined by his agent.—*Rep. Sum. Cases, 19th July 1817.*

176. The Judges and Registers who are empowered by Section 5 of the Regulation abovementioned, to employ an authorized officer of the court in taking the examinations of parties and witnesses for the purposes therein specified, may however employ the Sudder Ameens attached to their respective courts, in taking such examinations, and generally in making the enquiries provided for by that Regulation. But no final order for the admission of a pauper shall be passed by a Sudder Ameen, nor shall the commitment of pauper plaintiffs to close custody, in pursuance of Section 11, Regulation 28, 1814, be carried into execution by a Sudder Ameen, without the sanction of the Judge or Register, to whom it may belong to enforce the decision of the Ameen in such cases.—*Reg. 13, 1824, Sect. 4, Cl. 4.*

Provision in sec. 5 of the same reg. extended to S. A.

But no final order to be passed for admission of a pauper suit without the sanction of the judge or register.

*An Ameen may also be thus employed, rule No. 115, Chapter II.*

177. In taking the examination of the petitioner or agent in such cases, it shall be the duty of the court to admonish him, that any wilful misrepresentation or falsehood, or the fraudulent concealment of any material fact regarding the property in the petitioner's possession, or the recent transfer of such property will subject him to be tried for perjury, and on conviction to the punishment which is now or may be hereafter prescribed for that crime by the Regulations. The petitioner or agent shall subscribe his examination, which shall then be authenticated by the court in the usual manner.—*Reg. 28, 1814, Sect. 5, Cl. 4.*

Court to admonish the petitioner in taking his examination.

178. If upon such examination it should appear to the court that the petitioner is possessed of property sufficient to defray the expenses of the suit, or that he has recently sold, mortgaged, or otherwise transferred any property with the view of being admitted to sue as a pauper, the court will at once refuse to admit his suit in that form, and will refer him to the general rules in force.—*Ibid. Cl. 5.*

Courts when to reject the prayer of the petition.

179. The possession of property by the husband is no bar to the admission of a suit *in formâ pauperis* on the part of the wife.—*Rep. Sum. Cases, 15th Dec. 1845, p. 73.*

The possession of property by a husband no bar to the wife's suing as a pauper.

180. The possession of property by the father is no bar to the admission of a suit *in formâ pauperis* on the part of a son against his father.—*Rep. Sum. Cases, 7th Sept. 1846, p. 85.*

Idem, regarding the possession of property by a father.

181. The possession of property by a guardian is no bar to the admission of a suit *in formâ pauperis* on behalf of his ward.—*Rep. Sum. Cases, 11th Sept. 1843, p. 52.*

Idem, regarding the possession of property by a guardian.

182. If there shall appear any grounds for suspecting that the petitioner is possessed of property, or has recently transferred any property beyond that which he may have acknowledged or stated in his petition and examination, the court may issue a notice to the adverse party, signifying that if such party shall appear within a reasonable period, to be fixed by the court, he shall be permitted to shew cause why the plaintiff should not be allowed to sue as a pauper; the court may also summon witnesses or institute a local enquiry in the neighbourhood of the petitioner's residence, with the view of ascertaining whether the petitioner has recently transferred, or is possessed of any property beyond that stated in his examination.—*Reg. 28, 1814, Sect. 5, Cl. 6.*

Courts how to proceed when they may be desirous of ascertaining the amount of the petitioner's property.



A zillah court must hear the objections of the opposite party before admitting a pauper suit.

183. Held that a Zillah court is bound, before admitting a party to sue *in formâ pauperis*, to hear the objections which may be urged by the opposite party.—*Rep. Sum. Cases*, 21st Nov. 1834, p. 2.

A pauper plaintiff cannot increase the number of defendants without their being heard against him.

184. A pauper plaintiff cannot be allowed to add to the number of the defendants originally sued by him, without their being permitted to shew cause against his right to sue as a pauper.—*Rep. Sum. Cases*, 26th July 1847.

A plaintiff who has paid his institution fee, and provided for his vakeel's fee, cannot be allowed to sue as a pauper, but he may appeal as a pauper, after proving his poverty.

185. In reply to the following query by the Judge of city Patna, "Whether a plaintiff who has not instituted his suit as a pauper, may afterwards, in the course of it, be admitted to proceed as a pauper, on proof of his poverty; the Court of Sudder dewanny adawlut, on the 31st August, 1844, acquainted him, "that as in the case supposed, the plaintiff must have already paid the institution fee, as well as given security for vakeel's fees, and costs of suit, the Court are of opinion, that he cannot be allowed to prosecute the suit *in formâ pauperis*, but that in the event of an appeal from the decision on the original suit, there would be no objection to his being admitted as a pauper on the appeal, on producing satisfactory proof of his poverty."—*Con.* 186, 31st Aug. 1844.

If a plaintiff who has instituted a suit on stamped paper, pleads pauperism which requires to file a supplementary plaint, the pauperism must be enquired into, and if proved, his prayer granted.

186. A. sues B., having paid the stamp duty and his vakeel's fees:—pending the trial, B. takes out execution of a decree, and sells A.'s landed property. After decision of the suit, A. appeals to the Sudder dewanny adawlut, and the case is remanded for re-trial to amend the plaint, in consequence of which amendment a higher stamp would be required, and the amount of vakeel's fees, &c. considerably enhanced, A.'s property having been sold in satisfaction of the defendant's decree, A. pleads that he is a pauper, and, therefore unable to pay for the additional stamp required to fulfil the orders of the court. The Principal Sudder Ameen, holding that a party cannot be admitted a pauper in the middle of the suit, not having been one at the commencement, strikes the case off the file on default. A summary appeal is preferred to the Sudder dewanny adawlut, and the question is, whether A. should have been allowed to carry on his suit as a pauper, after due enquiry made on that point, or should have been nonsuited and allowed to institute a suit *de novo* for the whole claim. It was held that, when a plaintiff, on the plea of pauperism, urges his inability to comply with the permission of the court to file an amended plaint, his pauperism should be enquired into, and, if established, his prayer granted; and that, supposing the suit to be pending before the Principal Sudder Ameen or Sudder Ameen, and plaintiff to plead inability to give the amended plaint, the court before which the suit is should allow him time to present a petition to the Judge setting forth his pauperism, with a schedule of his property, when the Judge would refer it to the Principal Sudder Ameen, or investigate it himself.—*Con.* 1313, *West. C. 3d, Cal. C.* 31st Dec. 1841.

The heir on proof of pauperism may carry on the suit of his deceased pauper father.

187. It is not necessary to strike off the suit of a pauper plaintiff on his death. His heir on proof of pauperism, may be permitted to carry on the suit.—*Rep. Sum. Cases*, 10th April 1843, p. 47.

When the petitioner shall have been guilty of perjury he shall be committed to the court of circuit.

188. If from the result of such enquiry, or at any subsequent period, it should be satisfactorily established that the petitioner or the agent of a female petitioner has been guilty of wilful perjury in his examination, the court will not only refuse the prayer of the petitioner (or nonsuit the plaintiff if the cause be depending,) but will cause the per-

\* The Regulations first quoted in the margin have been rescinded by Section 2, Regulation 28, 1814, but the construction is equally applicable to the provisions of the latter Regulation.

son appearing to have been guilty of perjury to be committed to the Court of circuit to take his trial for such offence.—*Reg. 28, 1814, Sect. 5, Cl. 7.*

189. If none of the objections stated in clauses fifth and seventh, of the preceding section, should exist, and the petitioner should not appear to be possessed of sufficient property to enable him to defray the probable expences of the suit, the court is empowered to admit him to sue as a pauper on his finding two good and sufficient sureties, both of whom shall be householders, for his appearance whenever his attendance may be required by the court.—*Ibid, Sect. 6, Cl. 1.*

A party admitted to sue as a pauper shall find two sureties for his appearance

190. Under the existing laws, the Judge is not authorized to demand sureties for the appearance of the agent of a pauper female plaintiff, and such agent cannot be committed to the jail on the suit preferred through his agency appearing unfounded, vexatious, or wilfully exaggerated.—*Con. 777, Cal. C. 6th April, West. C. 3d May 1833.*

Sureties for the appearance of the agent of a pauper female cannot be demanded, nor can he be committed to jail, if the suit is unfounded, vexatious, or exaggerated.

191. When the required sureties shall have been furnished, if the pauper shall be unable to prevail on any of the vakeels of the court to undertake his suit, and he shall be unable to plead the cause in person, the court may require any of the authorized pleaders of the court to undertake and plead the suit, and no deposit shall be required from the plaintiff for the fees of such pleader.—*Reg. 28, 1814, Sect. 7, Cl. 1.*

The courts are authorized in certain cases to direct one of the pleaders to undertake the suit.

192. The courts are to state on the record of the trial, their reasons for every exercise of the power vested in them by this section; and the order of the court in such cases shall be a sufficient warrant to the vakeel to plead in the suit without filing the usual vakalatnamah.—*Ibid, Cl. 2.*

Reasons for exercising that power to be recorded

193. The provisions of Clause 6, Section 2, Regulation 12, 1833, [now Section 8, Act I. 1846.] which declare that engagements between vakeels and their clients, for their fees shall only be enforced by a regular suit, held to be applicable to pauper suits.—*Con. 1297, Cal. C. 28th May, West. C. 18th June 1841.*

Engagements between a vakeel and a pauper client can be enforced only by a regular suit

194. Held that the provisions of Clause 5, Section 2, Regulation 12, 1833, [corresponding in a great measure with Section 7, Act I. 1846,] by which parties are allowed to settle with their pleaders for their fees, are applicable to pauper as well as to other cases.—*Con. 1309, West. C. 15th Sept., Cal. C. 22d Oct 1841.*

Parties in pauper suits may settle with their pleaders for their fees.

195. Held, by the Calcutta Court, in concurrence with the Western Court, on a reference from the officiating Judge of 21-Purgunnahs, under date the 16th April last, that a Principal Sudder Ameen is not authorized to receive an answer to a plaint from a defendant in formâ pauperis, without the sanction of the Judge, it being a principle that the Judge only can determine the question of pauperism.—*Con. 919, Cal. C. 1st May, West. C. 5th June 1835.*

No P. S. A. can receive an answer to a plaint from a defendant in formâ pauperis, without the Judge's sanction

196. I beg to be favoured with the Court's opinion whether, on the petition of plaint being filed by a pauper plaintiff, the defendants might not be permitted to demur summarily on the ground of the illegality of the claim, or exaggerated valuation of the property claimed, before being called upon to deposit the whole amount of pleader's fees or incur the expences of a regular suit.—*Reply.*—With reference to Section 5, Regulation 4, 1793, which prohibits the admission of any pleadings whatever, but those therein specified, the objections of the defendant to the plaintiff's statement of the cause of action cannot be heard summarily ;

In a pauper suit the objections of the defendant to the plaintiff's cause of action cannot be heard summarily

but should, by analogy to the cases contemplated in Section 5, Regulation 13, 1908, be offered in answer to the plaint in the first instance.—*Con.* 821, *Cal. C.* 30th Aug., *West. C.* 20th Sept. 1833.

The judge alone can admit a supplemental plaint in a pauper suit

197. The zillah Judge is alone competent to admit a supplemental plaint to be filed by a pauper plaintiff.—*Rep. Sum. Cases*, 25th Aug. 1846, p. 83.

The fees of the pauper's pleader when to be paid by the defendant

198. If the pauper plaintiff shall gain his suit, the court will cause the defendant to make good the amount of the fees due to the pleader, who may have been employed on account of the plaintiff, or such part of them as the court may decree.—*Reg.* 28, 1814, *Sect.* 10, *Cl.* 1.

A decree passed in favor of a pauper reversed by the S. D. A. on the discovery of property sufficient to nullify the pauperism

199. A decree passed by the lower court in favor of a pauper plaintiff, reversed by the Sudder dewanny adawlut on discovery of property sufficient to nullify the fact of pauperism, quoad the suit, in possession of the pauper plaintiff at the time of institution of suit.—*S. D. A. Sel. Rep.* 7th Sept. 1846, vol. 7, p. 279.

A pauper plaintiff whose suit is dismissed with costs is liable to confinement, and like other insolvent debtors entitled to the benefit of sec. 11, Reg. 2, 1806

200. A person who has been admitted to sue as a pauper, and whose suit has been dismissed with costs, is liable to confinement at the instance of the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by a decree, in like manner with any other suitors, and of course, in common with all insolvent debtors, equally entitled to the benefit of the rules introduced by Section 11, Regulation 2, 1806.—*Con.* 110, 3d Sept. 1812.

The vakeel of a pauper plaintiff whose claim is dismissed is not entitled to any of the fees deposited by the defendant

201. I am directed by the Court to acknowledge the receipt of your letter of the 19th ultimo, and in reply to inform you that the vakeel of the pauper plaintiff, whose claim was dismissed is not entitled to receive any portion of the fee deposited by the defendant on account of her vakeel.—*Con.* 740, 7th Dec. 1832.

In what order claims are to be satisfied from the proceeds of the sale of a pauper's property

202. The suit of a pauper plaintiff being dismissed with costs, and the proceeds of the sale of his property being insufficient to pay the fees due to his pleader, with the costs and fees awarded to the opposite party, and the law expenses due to Government; the Judge, after payment of the vakeel's fees, should exercise his discretion in satisfying the other demands, in such manner as may appear equitable, leaving the party dissatisfied to appeal.—*Con.* 621, 21st Jan. 1831.

In pauper suits the vakeel's fees come first for payment, then stamp dues, after which the rule of Con. 621 will be applicable.

203. Held, on a reference from the Judge of Cluttacong, that in a pauper suit, after the payment of vakeel's fees, as prescribed by Construction 621, the dues of Government in respect to stamp expenses have the next claim, since there is no reason why the pauper plaintiff who has gained his cause, should have any advantage in this particular over other suitors who have to pay beforehand; but, after the payment of the Government stamp dues, the principle of the abovementioned Construction, that the order of satisfying claims is determinable by the circumstances of the case, is applicable to any other costs which may be incurred by Government as well as to claims of other parties.—*Con.* 1258, *Cal. C.* 1st Nov., *West. C.* 6th Dec. 1839.

The judge may refer suits in forma pauperis to a S. A.

204. When a plaintiff may have been admitted by the Judge or Register of a Zillah or City court, to institute his suit, in forma pauperis under the rules for paupers contained in Regulation 28, 1814, and the suit may in other respects be referrible to a Sudder Ameen, it shall be competent to the Judge to refer the same for trial and decision by one of the Sudder Ameens attached to the Zillah or City court or stationed with the

Register in any other part of his jurisdiction; and the suit so referred shall be proceeded upon by the Sudder Ameen as in other suits referred to him, subject to the provisions contained in Regulation 28, 1814.—*Reg. 13, 1824, Sect. 4, Cl. 2.*

205. The provisions in the Regulation above mentioned respecting pauper defendants in original suits, as well as those respecting pauper appellants and respondents in appealed cases, shall likewise be considered applicable to defendants in original suits, and to appellants and respondents in appealed cases referred for trial to Sudder Ameen; but no person shall be admitted by a Sudder Ameen to prosecute or defend an original suit or appeal, in formâ pauperis, without the written order of the zillah or city Judge or of the Register with whom the Ameen may be stationed, authorizing the admission of the party as a pauper under the provisions of Regulation 28, 1814.—*Ibid, Cl. 3.*

Certain provisions in reg. 28, 1814, declared applicable to parties in appealed cases referred for trial to S. A.

Exception

206. Moonsiffs are further prohibited from receiving any suits, which persons may be desirous to prefer before them in formâ pauperis; but it shall be competent for the Judge to refer for trial to the Moonsiffs, within his jurisdiction, any such suits which may have been instituted before him, and would otherwise have been cognizable by them whenever he may think proper so to do.—*Reg. 5, 1831, Sect. 5, Cl. 5.*

Particular provisions applicable to suits in formâ pauperis.

207. The Court observe that by the provisions of Clause 5, Section 5, Regulation 5, 1831, pauper cases may be referred to the Moonsiffs for decision. For the issue of process of these courts in such cases no establishment of *chuprassies* is retained; it will therefore be advisable that such cases be, in general, referred to the Sudder Ameen at the sudder station whose process may issue through the *chuprassies* attached to the Judges' courts. Where it may be found necessary to refer such a case to a Moonsiff, the summons or other process will issue in the manner described in Clause 4, Section 29, Regulation 23, 1814.—*Cir. Ord. West. C. 26th July, Cal. C. 1st Nov. 1833, par. 11.*

Proceedings of the Moonsiff when a pauper suit is referred to him.

## SECTION XV.

### *Paupers—Stamps*

208. A plaintiff originally admitted to sue as a pauper under Section 5, Regulation 28 of 1814, who may subsequently, while the suit is pending, become possessed of property of sufficient amount to nullify his plea of poverty, may in the opinion of the court, be called upon to pay up the original stamp duty in lieu of the institution fees, &c. under the penalty, in the event of his neglecting to do so, of being nonsuited.—*Con. 904, Cal. C. 3d Oct, West. C. 7th Nov. 1834.*

A plaintiff allowed to sue as a pauper, becoming possessed of property while the suit was pending, must pay up the stamp duty, or be nonsuited.

209. The stamp duty which has been substituted for the institution fee by Regulation 1, 1814, [now, Regulation 10, 1829,] shall not be required from plaintiffs who may be admitted to sue as paupers under the Regulation. The plaint, reply, or other pleadings on the part of the plaintiff, as well as applications on his part for receiving exhibits and summoning witnesses, may be written on unstamped paper. The notice to the defendant, the summons for witnesses and other processes on the part of the plaintiff shall be served through the *chuprassies* on the establishment of the courts without any expence to the

Stamp duties and other expences to be remitted to paupers; pleadings on their part and copy of the decree to be on unstamped paper

plaintiff; and the copy of the decree as well as copies of orders or proceedings which he may be required to take, shall be furnished to a pauper plaintiff on unstamped paper.—*Reg. 28, 1814, Sect. 8.*

Security bonds in pauper suits must not be admitted on unstamped paper

210. *Letter from the Judge of Bundelkund.*—The practice of this court has heretofore been to admit the records of *hazirzammee*, in pauper cases, on country unstamped paper, but these records not being specified in Section 8, Regulation 28, 1814, as exempted from stamp duties it appears to me to be irregular, and I have to request the favour of a communication of the orders of the *Sudder dewanny adawlut* on the subject.—*Reply of the Sudder Court.*—There being no exemption in favour of security bonds of the description of those referred to by Mr. Fraser, the Court inform him that the practice which obtains in his district of admitting such instruments on plain paper is opposed to the Regulations, and should be discontinued accordingly.—*Con. 1063, Cal. and West. C. 23d Dec. 1836*

Case in which the vakalatnamah in a pauper suit must be written, or not written, on stamped paper

211. I am now directed to communicate to you the opinion of the Court collectively that in all cases when a pleader may be appointed by a party, when a pauper, the vakalatnamah must be drawn out on stamped paper; vakalatnamahs not being included in Section 8, Regulation 28, 1814, which specified the stamp duties from which papers are exempted. In the cases specially provided for by the second clause of Section 7 of the Regulation in question, viz. where the pleader may have been appointed by the court, no vakalatnamah is of course necessary. But the Court do not consider this clause applicable to any case in which a vakeel is appointed by a party.—*Con. 261, 26th Dec. 1816.*

In all suits instituted in forma pauperis, defendant's pleadings may be on unstamped paper. Defendant may have copies on unstamped paper, and need not deposit vakeel's fees. Stamps to be charged on costs of suit, when incurred

212. And it is hereby enacted, that in all suits instituted in forma pauperis, the pleadings on the part of the defendant as well as all papers filed on his part on which a stamp is required by Schedule B. of Regulation 10 of 1829, of the Bengal code, may be written on unstamped paper, and copies of orders or proceedings which the defendant may be required to take shall be furnished to him on unstamped paper; and the defendant shall not be required to deposit vakeel's fees, provided always, that on the conclusion of the suit the court shall calculate the whole of the costs which would have been incurred by the defendant on account of stamp duties, if the suit had not been instituted in forma pauperis, and shall charge the same to the party cast, or to the parties respectively, in such proportions as may be deemed reasonable.—*Act IX. 1839. Sect. 2.*

A decision passed in favor of a pauper plaintiff cannot be appealed against by the defendant, if not a pauper, on plain paper

213. The following questions having been submitted to the Court: "Under the provisions of Act IX. 1839, and Construction 1250, can a defendant (not being a pauper) appeal on plain paper against a decision passed in favour of a pauper plaintiff by the lower court?" It was ruled that a decision passed in favour of a pauper plaintiff by the lower court cannot be appealed against by the defendant (not a pauper) on plain paper. "Also, is such defendant to be allowed to take a copy of the lower court's decree on plain paper for the purpose of presenting it with his petition of appeal?" The appealing defendant may be allowed a copy of the lower court's decree on plain paper, for presentation with his petition of appeal.—*Con. 1314, Cal. C. 10th Dec. 1841, West. C. 10th Jan. 1842.*

The appealing defendant may obtain a copy of the lower court's decree for presentation on plain paper

A pauper plaintiff may obtain a copy of interlocutory order against which he appeals, on plain paper.

214. It has been ruled by the Court that a pauper plaintiff dissatisfied with any interlocutory order, passed while his suit is pending, and desirous of appealing therefrom to a court of higher jurisdiction, is entitled to the privilege of obtaining a copy of such order or proceed-

ing against which he intends to appeal on plain paper.—*Cir. Ord. Cal. and West. C. 1st Nov. 1839, par. 2.*

215. The rule contained in paragraph 2, is to be understood as restricting the immunity from stamp duty to the order or proceeding from which the appeal is preferred, and is not to include copies of documents and other papers which paupers appealing may be desirous of filing therewith, in support of the objections taken by them to such proceedings or orders, which must be written on stamped paper, and not on plain paper, as allowed by some courts. It is hardly necessary to point out that this restriction can never operate with hardship on the pauper preferring the appeal, the power resting with the appellate tribunal of calling for such papers as it may deem requisite to elucidate any point not satisfactorily explained by the copy of the order appealed from.—*Cir. Ord. Cal. and West. C. 1st Nov. 1839.*

But other papers and documents which paupers may be desirous of filing with their appeal, must be on stamped paper.

The appeal court may call for any such papers & documents, and the pauper will not then be subject to the stamp duty.

216. A question having arisen in a case, now depending before the court, as to whether an application from a pauper appellant to stay the execution of the decree given against him, pending the appeal, is admissible on plain paper, I am directed to request that you will submit the point for the consideration of the Calcutta Court.—The Court are of opinion, that as applications of the nature of that abovementioned, are not included amongst the exceptions, contained in Section 8, Regulation 28 of 1814, which distinctly specifies the description of papers on which the stamp duties are to be remitted to paupers, they must be drawn out on stamped paper of the value prescribed for petitions presented to the courts in which they may be filed. The Court direct me to add that this principle has already been acted upon in regard to vakaluturnahs where the pauper may himself appoint a vakeel as well as in respect to security bonds filed under Section 6, Regulation 28 of 1814, and it appears to them equally applicable to petitions presented to the Court for the purpose before stated. The Court propose accordingly to adopt it as a rule of future practice.—*Con. 1132, West. C. 16th Feb., Cal. C. 9th March 1838.*

Applications from pauper appellants to stay execution of the decree pending appeal, and vakaluturnahs, and hazirzaminie bonds in pauper cases, must be on stamped paper

217. Similar copies [that is, copies on plain paper] of any orders passed in the execution of a decree, which a pauper in the court whence it may have issued, would be required by law, in the event of his appealing from such orders to the superior court, to file with his petition of appeal, are obtainable by him on unstamped paper.—*Cir. Ord. Cal. and West. C. 1st Nov. 1839.*

Copies of orders passed in execution of a decree which a pauper must file with his petition of appeal, may be obtainable on plain paper.

218. Copies of the proceedings and judgments of the Sudder dewanny adawlut, in appeal to the King in Council, which are required to be written on stamped paper of a prescribed value, by Section 19, Regulation 1, 1814, shall be furnished without expence to paupers, who may be parties in such appeals, and shall be written on unstamped paper of European manufacture—*Reg. 28, 1814, Sect. 18.*

Copies of the proceedings and judgments of the S D A may in certain cases be written on unstamped paper

219. On the conclusion of the suit, the court shall calculate the whole of the costs which would have been incurred by the plaintiff on account of the several stamp duties prescribed by Regulation 1, 1814 [now, Regulation 10, 1829,] and other legal expences, had he not been permitted to sue as a pauper, and shall charge the same in the decree to the party cast, or to the parties respectively, in such proportions as may be deemed equitable.—*Ibid, Sect. 9.*

All costs and expences to which the plaintiff would have been liable, had he not been admitted to sue as a pauper, to be inserted in the decree

220. Doubts having arisen whether the Courts of civil and criminal judicature, the Board of Revenue, the Board of Commissioners, the Collectors and other public officers,

Explanation that miscellaneous petitions and applications

are to be written on the prescribed stamped paper.

are authorized to receive from persons professing themselves to be paupers, any miscellaneous petitions, or applications, which are required to be written on stamped paper, or any other paper than the prescribed stamped paper; it is hereby declared, that such petitions or applications shall not be received by any of the said authorities except on paper bearing the prescribed stamp. Provided however, that the Courts of criminal judicature shall be at liberty to receive petitions on unstamped paper from prisoners, who may be confined under examination or sentence in any of the criminal jails.—*Reg.* 28. 1814, *Sect.* 19.

No stamp duty is leviable in pauper cases instituted in the Judge's court, and afterwards referred to Moonsiffs.

221. No stamp duty would be leviable in pauper cases instituted in the Judge's court and afterwards referred to Moonsiffs for decision.—*Con.* 915, *West. C.* 24th April, *Cal. C.* 29th May 1835.

Mode in which the interests of govt in respect to stamp duty in pauper suits before Moonsiffs are to be protected.

222. I am directed to communicate to you the following rule which it has been resolved, in accordance with a suggestion of the Sudder Board of Revenue for the North Western Provinces, to adopt, with a view of protecting the interests of Government in respect to stamp duty in pauper suits before the Moonsiffs, who are empowered to try such suits when referred to them by the Judge, but have no pleaders on the part of Government attached to their establishment. Whenever a pauper suit may have been referred for trial and decision to a Moonsiff, you will be careful to instruct him invariably to forward to your court a copy of his decree for the information of the Government pleader in the Zillah court, in order that the latter may take the necessary steps for asserting the rights of Government, in pursuance of directions which he will receive to that effect in the revenue department.—*Cir. Ord.* 12th June 1840.

Applications from government to recover stamp duties in pauper suits may be made on plain paper.

223 Applications on the part of Government to recover the stamp duties incurred in pauper suits, may be made on plain paper.—*Rep. Sum. Cases*, 30th Jan. 1847.

Statement to be furnished monthly to the collector to enable him to collect the govt stamp dues in pauper suits.

224. Pursuant to the instructions of the Government, the Court direct that a statement, in the subjoined form, on account of your own and the subordinate district courts, be furnished monthly to the Collector, to enable that officer to take measures for recovering the amount due to the Government on account of stamp fees in pauper suits:

Statement of pauper suits decided in the month of ———, 184—, in the courts of ———.  
Zillah ———.

Court in which the suits are decided.	No of suit	Names of parties	Amount due to the Govt on account of stamp fees	Party declared liable for the amount

—*Cir. Ord.* 24th April 1846.

225. With reference to Circular order No. 11 of the 24th April last, regarding recovery of sums due to the Government on account of stamped fees in pauper suits, and in modification of the monthly statement thereby directed to be furnished to the Collector on the subject, I am instructed by the Court to request that you will supply the information according to the subjoined form on account of your own and subordinate courts.—*Cir. Ord 2d Oct. 1846.*

Information to be furnished in reference to the stamped fees due to govt. in pauper suits.

226. The Court are pleased to direct that an additional column, headed "law expenses," be inserted immediately before the last column of the statement of pauper suits, the transmission of which to the Collector was prescribed by the Circular orders of the 24th April and 2d October, 1846.—*Cir. Ord. 18th June 1847.*

Mode in which the entry regarding stamped fees in pauper suits is to be entered.

## SECTION XVI.

### *Paupers—Unfounded and Litigious Suits—Refusal of the Pauper to pay Fees and Costs.*

227. If the plaintiff shall not establish his claim, and the court shall deem the suit to be unfounded, vexatious, or wilfully exaggerated, and the plaintiff shall not pay the amount of his own fees, and the fees and costs which may be awarded against him in favour of the opposite party, the court is authorized to commit him to close custody in the civil jail, without labour, for a period not exceeding six months.—*Reg. 28, 1814, Sect 11, Cl. 1.*

Pauper plaintiff, under certain circumstances liable to a sentence of six months' imprisonment.

228. The Judge of the Jangle Mohals having required information whether persons suing as paupers, whose suits, preferred under Regulation 46, 1793, might prove on trial groundless and vexatious, were liable to be committed to close custody *in the jail of the Dewanny or Foujdary court* under Section 3 of that Regulation, was told on the 19th January, 1810, that the description of persons referred to in Section 3, should be confined in the Dewanny jail.—*Con. 57, 9th Jan. 1810.*

Paupers whose suits prove groundless and vexatious, when confined, must be confined in the dewanny jail

229. On a reference from the Moorshedabad Court of appeal, to ascertain by whom the subsistence of pauper plaintiffs or appellants, confined under the Regulations for litigiousness in their plants or appeals, is payable, the Court of Sudder dewanny adawlut determined, that as plaintiffs and appellants, in such cases, are not confined at the instance of the defendant or respondent, any requisite subsistence for them, during their imprisonment, should be paid by Government.—*Con. 9, 13th Sept. 1805*

The subsistence money of pauper plaintiffs confined for litigiousness must be paid by government.

230. Women of rank, who are exempted from personal appearance in court, are not proper objects of the discretionary rule in Section 3, Regulation 46, 1793, and Section 2, Regulation 3, 1802, which authorizes the confinement of litigious paupers.—*Con. 11, 26th Sept. 1805.*

Women of rank suing as paupers not liable to be confined for litigiousness

231. Such order of confinement shall be carried into immediate execution, and shall not be suspended in consequence of the plaintiffs being desirous of appealing from the judgment: provided however, that the plaintiff shall at any time be entitled to his discharge from such confinement on his paying into court the full amount of the costs and expenses awarded against him in the decree.—*Reg. 28, 1814. Sect. 11, Cl. 2.*

Execution of such sentence not to be suspended on account of an appeal being preferred from the decision.  
Proviso



Farther imprisonment may be ordered for a litigious appeal.

232. The order for the confinement of litigious paupers is to be carried into effect, notwithstanding an appeal, and a further imprisonment may be ordered in the event of litigious appeal.—*Con. 12, 18th Oct. 1805.*

Sureties failing to produce a pauper plaintiff liable to six months' imprisonment

233. If the pauper plaintiff shall abscond, and his sureties shall not produce him before the court, and the order for his imprisonment cannot therefore be carried into effect, the said sureties shall be called upon to make good the full amount of the costs adjudged against the plaintiff. In the event of their refusing or failing to make good the costs, the court is authorized to commit them to close custody, without labour, in the civil jail for a period not exceeding six months, subject to the provision contained in Clause 2 of this Section.—*Reg. 28, 1811, Sect. 11, Cl. 3*

Nature and extent of the responsibility of the *haziramins* of paupers.

234. The responsibility of *haziramins* of paupers and their property ceases on their death, but in the event of their absconding, notice to cause attendance of parties for whose appearance they are sureties, should be proclaimed at their houses, and in public *cutcherry*, after which, on failure to produce the parties, the fees and costs demandable may be recovered from their property.—*Con. 54, 13th Feb. 1808.*

The sureties of paupers are liable, if the principal does not appear, to six months' imprisonment; the costs due from the principal cannot be levied from the goods of the security

235. The Judge of Zillah Etawah, referring to Clause 3, Section 11 of Regulation 28 of 1811, requested to be informed whether in the event of a pauper and his sureties both absconding, the property of the latter can be sold in satisfaction of the costs and expences awarded against the former in the decree. The Courts held, that in the present state of the law the sureties for paupers are liable only to the penalty of imprisonment for six months prescribed by Clause 3, Section 11, Regulation 28, 1811, in the event of the principals not appearing, and that the amount of costs due from the principal cannot be levied on the goods of the surety.—*Con. 922, West. C. 19th Dec. 1834, Cal. C. 26th Jan. 1835.*

Court to realize the costs due from paupers, notwithstanding their imprisonment, or the imprisonment of their sureties

236. The confinement of a pauper plaintiff, or of his sureties, under this section, shall not preclude the court from realizing the costs and expences adjudged against a pauper plaintiff, but in all cases in which such plaintiff may fail to make good the costs and expences to which he may be declared liable in the decree, whether those costs may be due to the defendant or to Government, the Court shall endeavour to realize the amount by the sale of any property which may belong to the plaintiff, either at the time of the decree or subsequently thereto.—*Reg. 28, 1814, Sect. 11, Cl. 4.*

## SECTION XVII.

### *Appeals in the Pauper Suit.*

Provision of cl. 1, sec. 5, reg. 28, 1811, applicable to any party desirous of appealing as a pauper to the S. D. A.

237. It is hereby enacted, that the proviso contained in Clause 1, Section 5, Regulation 28, 1811, of the Bengal code, in regard to females of rank, shall be applicable, at the discretion of the Courts of Sudder dewanny adawlut of the Presidency of Fort William in Bengal respectively, to any party desirous of appealing in formâ pauperis to either of those courts.—*Act XLX. 1840.*

Persons desirous of appealing as paupers to present a petition to the superior court.

238. If any party to an original suit may be desirous of appealing in formâ pauperis from the decision passed in such suit, he shall present a petition in the mode prescribed by

clause first, Section 5 of this Regulation, to the court by which his appeal may be regularly cognizable under the Regulations.—*Reg. 28, 1814, Sect. 12, Cl. 1.*

239. Such petition shall be accompanied by an authenticated copy of the decree, and shall contain a schedule of the whole real or personal property belonging to the petitioner, and the estimated value of such property, together with a statement of the specific grounds on which the petitioner may desire to prefer an appeal.—*Ibid, Cl. 2.*

With copy of the decree.  
What the petition is to contain.

240. If upon a perusal of the petition and the copy of the decree, the original judgment shall not appear to the court to be erroneous or unjust, or if the nature of the cause shall not appear to be of sufficient importance to merit a further investigation in appeal, the court will reject the petition and will refuse to admit the petitioner to sue in appeal as a pauper.—*Ibid, Cl. 3.*

Court when to reject the petition.

241. An order passed by the zillah Judge under Clause 3, Section 12, Regulation 28, 1814, refusing permission to a party to appeal *in formâ pauperis*, is final, and not open to appeal to the Sudder dewanny adawlut.—*Rep. Sum. Cases, 13th June 1842, p. 32.*

An order passed by a judge under reg. 28, 1814, sec. 12, cl. 3, is final, and not open to appeal.

242. Provided however, that the petitioner shall nevertheless be entitled to institute his appeal on performing the conditions of appeal prescribed by the Regulations for persons not suing as paupers.—*Reg. 28, 1814, Sect. 12, Cl. 4.*

PROVIDED.

243. A question having arisen as to whether an appeal lies to the King in Council from a summary order passed by the Court of Sudder dewanny adawlut, refusing on the grounds specified in Clause 3, Section 12, Regulation 28 of 1814, to admit an appeal *in formâ pauperis*, from the decision of a zillah Judge, in which the sum or value awarded amounted to 50,000 rupees, the petitioner being, at the same time, left at liberty to institute his appeal on performing the conditions prescribed by the Regulations for persons not suing as paupers, I am directed to request you will submit the point for the consideration and opinion of the Calcutta Court. The Court observe that in the case cited in the margin, it was ruled by the Court of Sudder dewanny adawlut, that an order passed by a Provincial court refusing to admit an appeal *in formâ pauperis* on the merits of the case, and without reference to the question of pauperism, was final and conclusive; and that in a note appended thereto, it is added that "the Sudder dewanny adawlut had on many occasions construed Clause 3, Section 12, Regulation 28, 1814, as vesting the appellate authority with discretion to pass a final order not open to special appeal." The Court are of opinion that the same principle must be held to apply to orders passed by themselves of the nature of that described in the preceding paragraph, and that consequently no appeal lies from such orders to the King in Council.—*Con. 1025, West C. 8th July, Cal. C. 4th Aug. 1836.*

No appeal lies to the Privy Council from an order of the S. D. A. refusing to admit an appeal *in formâ pauperis* from the decision of a zillah judge in a suit of such value as may be appealable.

*The rules regarding appeals to the Privy Council were subsequently modified by Orders in Council, which will be found under the last Chapter, in the Section which refers to such appeals.*

244. A question having arisen whether, on the rejection under Clause 3, Section 12, Regulation 28, 1814, of a petition suing to appeal as pauper, the petitioner having been admitted as a pauper in the lower court, the party so rejected receiving back his copy of the decree of the inferior court which he obtained on plain paper, and being desirous of instituting his appeal in the manner provided for by clause 4 of the same section and Regulation, may accompany his

A pauper whose petition is rejected under reg. 28, 1814, sec. 12, cl. 3, may present with his petition, written on full stamp, the copy of the decree granted on plain paper.

petition of appeal with the copy on plain paper abovementioned, or whether he must obtain a fresh copy of the decree on the prescribed stamp in the mode required from parties who were not paupers in the lower court, it was held that under the circumstances stated, a pauper may accompany his petition of appeal presented under Clause 1, Section 12, Regulation 28, 1814, with a copy of the decree of the lower court on plain paper—*Con. 1217, West. C. 17th May, Cal. C. 21st June 1839.*

The rules in reg 28, 1814, secs. 12 and 13, are applicable to pauper appellants. But if the appellant sued originally as a pauper he may file a copy of the decree of the lower court on plain paper.

245. The Court propose to inform the Judge of Jessore, with the concurrence of the Agra Court, that in their opinion the rules contained in Sections 12 and 13, Regulation 28 of 1814, are applicable to any pauper appellant, whether he was a pauper in the original suit or not. If however the appellant appeared originally as a pauper, he would of course be at liberty to file a copy of the decree of the lower court on plain paper, being entitled to such copy under Section 8 of the same Regulation.—*Con. 1207, Cal. C. 1st, West C 26th April 1839.*

In what cases the court may admit the petition to appeal as a pauper.

246. If upon the perusal of a petition presented under the preceding section, and of the copy of the decree accompanying it, the court shall be of opinion that there is reason to believe the judgment to be erroneous or unjust, or that the nature of the cause renders it deserving of a further investigation in appeal, the court is empowered to admit the appeal subject to the rules and conditions prescribed in Sections 5 and 6 of this Regulation. Sections 7, 8, 9, 10 and 11 shall also be considered applicable to persons who may be admitted to appeal in formâ pauperis.—*Reg. 28, 1814, Sect. 13.*

subject to what rule

The S D A refused to admit an appeal in formâ pauperis of a party who would not defend in the lower court.

247. The Sudder dewanny adawlut refused an application to appeal in formâ pauperis preferred by a party who would not defend in the lower courts.—*Rep. Sum. Cases, 13th April 1842, p. 27.*

Pauper plaintiffs who may have gained their suit to be admitted to respond in appeals as paupers.

248. If a decision be passed in any original suit in favour of a pauper plaintiff, and the adverse party shall appeal from such decision, the principles of the rules contained in Sections 7, 8, 9 and 10, shall without any further enquiry be considered applicable to the respondent or original pauper plaintiff in such appealed suit provided that the execution of the original decree shall have been suspended during the appeal.—*Reg. 28, 1814, Sect. 14.*

Amount of the stamp duty paid on appeal to be returned to the appellant in certain cases.

249. If a decision in favour of a pauper plaintiff be reversed in appeal, the amount of the stamp duty substituted for the institution fee which may have been paid by the appellant, shall be returned to him by the court, together with such portion of the deposit which may have been made by him on account of the fee payable to his vakeel, as may be deemed reasonable, and the amount of such stamp duty and deposit, as well as all other costs and expences which may be awarded in the decree against the respondent, shall be recovered from any property which the respondent may, at any time, be found to possess.—*Ibid Sect 15.*

And recovered with other costs from the respondent's property.

The payment of fees in pauper cases cannot be stayed on the ground that an appeal has been instituted from the first decision.

250. The Court are of opinion that the law is rightly stated in the 2d and 3d paragraphs of the Judge's letter, viz. That the payment of fees in pauper as well as other cases cannot be stayed on the ground that an appeal has been instituted from the first decision: and although there may be a liability to inconvenience in particular cases, the general rule appears to the Court sound and just, they see no reason therefore to advocate the proposed change in the existing practice of the courts.—*Con. 776, West C. 4th April, Cal. C. 3d May 1833.*

251. If a defendant or respondent, in any suit (except in the case provided for by Section 14,) shall be desirous of being admitted to plead in formâ pauperis, he shall appear either in person or by an authorized agent, before the court, in which the suit may be depending, in conformity with the rules prescribed in clause first of Section 5 of this Regulation; and shall present a petition, containing an exact schedule of the whole real or personal property belonging to him, and the estimated value of such property.—*Reg. 28, 1814, Sect. 16, Cl. 1.*

Defendants or respondents wishing to plead as paupers to present a petition to the court.

252. The court to whom such petition may be presented, shall then proceed in conformity with clauses third, fourth, fifth, sixth, and seventh of Section 5 of this Regulation.—*Ibid, Cl. 2.*

Court how to proceed.

253. If after the examination and enquiries, prescribed in those clauses, the court shall be satisfied that the petitioner is not possessed of sufficient property to defray the probable expenses of the suit, and that he can neither plead the suit in person, nor prevail on any of the authorised pleaders of the court to undertake the defence of the suit, the court is empowered to grant to the petitioner the same advantages and facilities in the defence of the suit as are allowed to pauper plaintiffs and appellants, under Sections 7, 8, 9 and 10 of this Regulation, and no security except for personal appearance shall be required from such defendant or respondent.—*Ibid, Cl. 3.*

And in what cases authorised to comply with the prayer of the petition.

254. Regulation 28, 1814, relative to paupers, not containing any specific provision respecting pauper appellants or respondents, in second or special appeals, it is hereby declared that the provisions in that Regulation respecting appeals in formâ pauperis from decisions passed in original suits, shall after the promulgation of the present Regulation be considered applicable to any second or special appeals which may be preferred in formâ pauperis; and which may be hereafter deemed admissible under the rules specified in the preceding section.—*Reg. 2, 1825, Sect. 5.*

The provisions of reg. 28, 1814, extended to the admission of such second or special appeals in formâ pauperis as may be hereafter deemed admissible under the rules in force.

255. Decided by the Government, in concurrence with the opinion of the Calcutta Court, that the provisions of Act IX. 1839, have equal reference to the respondent in an appeal, as to the defendant in an original suit.—*Con. 1250, 13th Sept. 1839.*

The provisions of act 9, 1839, have equal reference to the respondent in an appeal, as to the defendant in an original suit.

## SECTION XVIII

### *Institution and Defence of Suits by Persons not amenable to the Courts.*

256. From and after the promulgation of this Regulation every person being an inhabitant of a foreign territory, who may desire to institute or defend an original suit or to prosecute or defend an appeal in any Zillah, City, or Provincial court, or in the Sudder dewanny adawlut, shall be required to furnish security for all eventual costs of suit, which may be adjudged payable by such person, and shall furnish such security by a surety or sureties residing and possessing property within the limits of the Company's territory and within the jurisdiction of the Company's court. Such security shall be furnished by a plaintiff or appellant within six weeks of the date on which his plaint or ap-

Inhabitants of a foreign territory who may desire to institute or defend an original suit, or to prosecute or defend an appeal in any of the courts, to furnish security for all eventual costs of suits, by a surety or sureties residing and possessing property within the limits of the company's territory.

Security to be furnished. Within six weeks.

No appeal shall be admitted unless the whole of the costs in the lower courts shall have been made good, and security given to cover the costs in appeal.

The above rules to be applicable to persons, who may have instituted or defended any original suit, or prosecuted or defended an appeal in any of the courts becoming an inhabitant of a foreign territory before a decree is passed on such suit or appeal.

Foreigners, possessing property in the British territories, when suing or being sued, must find security under reg. 14, 1829.

The present rules not applicable to pauper suitors under reg. 28, 1814.

appeal is filed, and a defendant or respondent shall furnish it within six weeks of the date on which the usual summons is served on him; unless such security be so furnished, the suit of such person, if plaintiff, shall not be proceeded in, if defendant or respondent, he shall not be allowed to defend his suit or appeal, but the cause shall be decided *ex-parte* on the statements and proofs of his opponent. And no appeal shall be admitted from the party who may have failed to give the required security, until he shall first have made good the whole of the costs demandable from him in the lower court, and given the necessary security to cover the costs in appeal.—*Reg. 14, 1829, Sect. 2, Cl. 1.*

257. The same rule shall be applicable and the same mode of proceeding shall be observed in the event of any person who may have instituted or defended any original suit, or prosecuted or defended an appeal in a Zillah, City or Provincial court, becoming an inhabitant of a foreign territory, before a decree is passed on such suit or appeal, and failing to give the required security within six weeks of its being demanded by the court, and such demand the court is hereby required to make immediately on the circumstance becoming known, even though no motion shall be made to that effect.—*Ibid, Cl. 2.*

258. Held, on a reference from the Judge of Futehpore, that parties instituting and defending suits in the Company's courts and who reside in a foreign state, but hold lands and other property within the limits of the British territories, must nevertheless find security for costs under the provisions of Regulation 14, 1829.—*Con. 1355, West. C. 5th, Cal. C. 26th Aug. 1842.*

259. It is however provided, that nothing contained in this section shall be considered applicable to pauper suitors coming within the provisions of Regulation 28, 1814.—*Reg. 14, 1829. Sect. 2 Cl. 3.*

## SECTION XIX

*Suits of Zemindars and other Proprietors, under Regulation 2, 1819. Section 30, to assess lands held rent free; or of individuals claiming to hold lands exempt from rent.*

To whom the revenue assessed on lands not exceeding one hundred begahs alienated before the 1st Dec. 1790, is to belong.

260. The revenue assessable under Section 9 on land not exceeding one hundred begahs of the measurement that may prevail in the purgunnah, wherein it may be situated, and whether lying in one village, or two, or more villages, and that may have been alienated by any one grant, made previous to the 1st December, 1790, and which may be adjudged or become liable to the payment of revenue, shall belong to the person responsible for the discharge of the revenue of the estate or dependant talook in which the land may be situated, notwithstanding anything said in Section 8, Regulation 1, 1793; and he shall not be liable to the payment of any additional revenue, on account of the assessment which may be chargeable on such lands, during the continuance of the engagement under which he may pay the revenue of such estate, or dependant talook, when the land may be so adjudged liable to the payment of revenue. If the estate or dependant talook shall be held khaus when the lands are decreed liable to the payment of revenue, the amount is to be collected by, and paid to whomsoever the rents and revenue of the estate or talook may

be payable, until a settlement shall be concluded for the revenue of it, either with the proprietor, or a farmer. The land which may be so adjudged subject to the payment of revenue, is to be considered as a dependant talook. — *Reg. 19, 1793, Sect. 6.*

261. The rules in the preceding section, are to be held applicable to the lands specified in Section 6; with this difference, that the proprietor, farmer, dependant talookdar, or officer of Government, to whom the revenue may be payable, shall ascertain the produce of the land without subjecting the grantee to any expence, and submit the accounts of it to the Collector, who shall fix the revenue to be paid from the lands in perpetuity, reporting the amount for the confirmation of the Board of Revenue, who are empowered, in cases in which it shall appear to them proper, to increase or reduce the amount. If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors, shall hold the lands as a dependant talook, subject to the payment of such fixed revenue for ever. *Ibid, Sect. 9.*

Rule for fixing the amount of the revenue on the lands specified in sec. 6.

262. All grants for holding land exempt from the payment of revenue, whether exceeding or under 100 begahs, that have been made since the 1st December, 1790, or that may be hereafter made, by any other authority than that of the Governor General in Council, are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant either with regard to the property in the soil, or the rents of it. And every person who now possesses, or may succeed to the proprietary right in any estate or dependant talook, or who now holds or may hereafter hold any estate or dependant talook in farm of Government, or of the proprietor, or any other person, and every officer of Government appointed to make the collections from any estate or talook held khans, is authorized and required to collect the rents from such lands at the rates of the purgunnah, and to dispossess the grantee of the proprietary right in the land, and to re-annex it to the estate or talook in which it may be situated, without making previous application to a Court of judicature, or sending previous or subsequent notice of the dispossession or annexation to any officer of Government, nor shall any such proprietor, farmer, or dependant talookdar, be liable to an increase of assessment on account of such grants which he may resume and annul, during the term of the engagements that he may be under for the payment of the revenue of such estate or talook when the grant may be so resumed and annulled. The managers of the estates of disqualified proprietors, and of joint undivided estates, are authorized and required to exercise on behalf of the proprietors, the powers vested in proprietors by this section. — *Ibid, Sect. 10.*

Grants made since the 1st Dec. 1790, declared null and void.

Managers of estates to exercise on behalf of the proprietors, the powers vested in proprietors by this section.

263. Proprietors or farmers of land, or dependant talookdars, who may deem themselves entitled to the revenue of any land of the description of that specified in Section 6, situated in their respective estates, farms, or talooks, [viz. lands not exceeding one hundred begahs, whether lying in one village, or two or more villages that may have been alienated by any one grant made previous to the 1st of December, 1790], are to institute a suit for the recovery of it in the Court of Dewanny adawlut. Any proprietor, or farmer of land, or dependant talookdar, or other person, subjecting such lands to the

How proprietors & farmers of land, &c are to recover the revenue payable to them from the lands specified in sec. 6

payment of revenue, without having previously obtained a judicial decree for that purpose, shall be liable to be sued for damages by the parties injured. Where estates or dependant talooks may be held khaus, the right of suing for the recovery of the revenue from the lands specified in Section 6, is to be considered as vested in the party to whom the collections from the estate or talook may be payable. If the estate or talook be held khaus by Government, the tehseldar or other officer is to sue for the revenue chargeable on such lands in the room of the proprietor, but under the directions of the Collector.—*Reg. 19, 1793, Sect. 11*

To whom the right of suing for the revenue of the lands specified in sec. 6, is to belong, if the estate or talook be held khaus.

Grants forged or altered in any respect, or antedated, declared void.

264. If it shall appear to any Court of judicature during the course of a trial, that a grant for land to be held exempt from the payment of revenue, dated prior to the 1st December, 1790, has been forged, or that the name of the original grantee has been erased, and any other name substituted, or that any name not in the original grant has been inserted, or that the denomination of the tenure in the original grant has been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant shall be adjudged null and void as far as regards the exemption of the land from the payment of revenue and the land shall be subjected to the payment of revenue accordingly.—*Ibid, Sect. 17.*

A zemindar may institute one and the same suit for the recovery of the revenue of land exceeding 100 begahs, alienated by two or more grants before the 1st Dec 1790, if each grant does not exceed 100 begahs.

265. Can a zemindar institute and maintain one and the same suit for the recovery of the revenue of land exceeding one hundred begahs, held exempt from the payment of revenue, which may have been alienated by two or more grants prior to the 1st December, 1790; provided that each of the said grants does not exceed one hundred begahs, and provided further, that the plaintiff, prior to the institution of the suit, has no means of ascertaining the exact quantity of land comprised in each of the said grants?—I am desired in reply to acquaint you, that as the Court cannot find any provision or provisions in Regulations 3, 4, and 19 of 1793, which prima facie can be construed as prohibitory of the institution of such a suit as supposed in your letter, they are of opinion that it ought to be entertained, leaving its legality and the plaintiff's right to be decided upon investigation of the facts of the case.—*Con. 346, 3d Aug. 1821.*

Certain suits instituted in the civil courts to be referred to the collectors, and parties hereby authorized to prefer certain claims in the first instance to the collector.

266. All suits preferred in a Court of judicature by proprietors, farmers or talookdars to the revenue of any land held free of assessment, as well as all suits so preferred by individuals claiming to hold lands exempt from revenue, shall, immediately on their institution, be referred for investigation to the Collector or other officer exercising the powers of Collector.—*Reg. 2, 1819, Sect. 30, Cl. 1.*

Cases under reg. 2, 1819, sec. 30, should not be referred to the Sudder Ameens.

267. Clause 1, Section 30, Regulation 2 of 1819, expressly directs, that "all suits preferred in a Court of judicature by proprietors, farmers, or talookdars, to the revenue of any land held free of assessment, as well as all suits preferred by individuals claiming to hold lands exempt from revenue, shall immediately on their institution, be referred for investigation to the Collector." The Judge of Hooghly therefore should not have referred the case in question to the Sudder Ameen.—*Con. 589, 8th April 1831.*

A collector cannot decline to take up a suit under reg. 2,

268. The Court are of opinion, that the Collector cannot, on the ground of the plaintiff being a public officer on his establishment, decline to take up the case referred to him under.

Section 30, Regulation 2, 1819 ; inasmuch as the rule there laid down, that suits for the right of holding land free of assessment shall, when instituted in the Zillah court, be referred to the Collector for investigation, is general and peremptory ; and the plaintiff might, if he chose, have preferred the claim in the first instance to the Collector, who could not then have avoided the jurisdiction.—*Con. 320, 28th July 1820.*

269. Suits in which lands held exempt from assessment form the subject of dispute, but in which the validity of the tenure is not contested, are not referrible to the Collector under the provisions of Section 30, Regulation 2, 1819.—*Con. 669, 13th Jan. 1832.*

1819, sec. 30, on the ground that the plaintiff is an officer on his establishment.

270. I am directed by the Court to observe that in the cases alluded to by you, there are generally two points at issue—1st, the proprietary right, or right of ownership, and 2ndly, the nature of the tenure under which the lands are held. In all cases, in which the right of ownership is alone the point at issue, (as for instance, when the heirs of a holder of rent-free lands sue their co-panceners for their respective shares,) the case appertains solely to the Civil court ; on the other hand, if the nature of the tenure as well as the proprietary right is disputed, viz. if a zemindar claims possession of any land as attached to his estate, and the defendant pleads that he holds possession thereof as rent-free, or vice versa, the case must, in the judgment of the court, be referred to the Collector for report.—*Con. 981, Cal. C. 16th Sept. 1835, West. C. 11th March 1836, par. 1*

Suits in which rent-free lands are the subject in dispute but in which the validity of the tenure is not disputed, are not to be referred to the collector.

Nature of those suits for rent-free lands which appertain solely to the civil court, & those which must be referred to the collector for report.

271. With reference to the 10th paragraph of your letter, I am directed to request, in the event of the Collector returning any reference made by you, with an opinion that the case is not one on which he is bound to report, that you will, in the event of your entertaining a different opinion repeat the order, under the usual precept, requiring a return to be made within a given period. Should the Collector still refuse to investigate the case, you will then report the circumstances in English for the information of this court, in order that such further measures, may be adopted as may appear to be necessary and proper.—*Ibid, par. 2.*

Course to be pursued if the collector returns a suit on the ground of its not being one on which he is bound to report.

272. All suits in which *lakhray* land is in dispute are properly cognizable by the Collectors, not those only in which Government is a party.—*Con. 527, 30th Oct. 1829.*

All lakhray suits are cognizable by the collector, not those only in which govt. is a party

273. When suits which involve the validity of titles to hold lands exempt from the payment of revenue have been tried by courts inferior to the Zillah Judge's court, without a previous reference to the Collector, the decisions should be quashed and the suits placed on the Judge's file and the prescribed reference made to the Collector.—*Con. 584, 25th Feb. 1831.*

Course to be pursued when suits under this section have been tried by the inferior courts without a reference to the collector for report.

274. If in an appeal from the decision of a Moonsiff, the Principal Sudder Ameen should be of opinion that the matter at issue was of such a nature as to render a reference to the Collector under the provisions of Section 30, Regulation 2, 1819, necessary, he should not remand the suit to the Moonsiff but send the case to the Judge, under the Circular order, Sudder dewanny adawlut, dated 14th June, 1839, recommending the annulment of the Moonsiff's decision, and the return of the case to that officer on the ground that he ought to have rejected the suit in the first instance, as illegally instituted, and in order that he should now follow that course.—*Con. 1261, West. C. 6th Dec. 1839, Cal. C. 3d Jan. 1840.*

Course of procedure when a P. S. A. trying an appeal from a moonsiff finds that a reference should have been made to the collector under reg. 2, 1819, sec. 30

275. On a reference from the Judge of Chittagong, the Courts of Sudder dewanny adawlut held that a suit brought by a zemindar for the rent of lands in which the defendant claims

A suit of a zemindar for the rent of land in which the de-



pendant claims a right of property, in virtue of a rent-free grant, is not referrible to the collector under reg. 2, 1819, sec. 30; it is a boundary dispute.

Such suits only are referrible in which the point at issue is the right to hold land free of rent, or to resume rent-free lands.

Order of the S. D. A. to inspect the files, and transmit to the collector all pending suits which should be referred to him.

When a zemindar sues to resume lands held on a rent-free tenure, the only question for the court to determine is the validity or otherwise of the tenure.

Valuation of suits for recovering rent-free lands

the right of property in virtue of a rent-free grant, is not referrible to the Collector under the provisions of Section 30, Regulation 2, 1819, but must be considered in the light of a boundary dispute and disposed of in the ordinary mode by the Civil court.—*Con. 1067, Cal. C. 30th Dec. 1836, West. C. 13th Jan. 1837.*

276. Under this section, such suits only are referrible, in which the point at issue is the right to hold land free of rent, or to resume land held as rent-free under tenures stated to be illegal or invalid. Suits for possession, or for rent of lands held exempt from the payment of revenue to Government, the validity of the tenure of which is not disputed, cannot be so referred, but must be tried and determined under the general rules for the decision of regular suits.—*Ca. Ord. Cal. and West. C. 30th Aug. 1833, par. 1.*

277. Several instances having occurred, in which it has been found necessary to quash the proceedings of the lower courts in suits involving the question of the validity of titles to hold land exempt from the payment of revenue, in consequence of their having been tried and determined without a previous reference to the Collectors, as expressly required by Section 30, Regulation 2, 1819: the Court desire that you will immediately inspect the suits pending on your file, and transfer for report to the Collector all suits of the nature above stated, which have not already been referred and reported on.—*Ca. Ord. 23th Feb. 1831.*

278. In reply to your second query, in the case of a zemindar, suing to resume lands held on a rent-free tenure, the only question for the court to determine is the validity or otherwise of the alleged rent-free tenure, and not the amount assessable thereon. The decree, in the event of the suit being decided in favour of the plaintiff, should merely declare the land liable to assessment.—*Con. 576, 1st Oct. 1830, par. 3.*

279. In an action by a landholder for recovering rent-free lands, in which the suit was laid at one year's produce instead of at the value prescribed for suits regarding rent-free lands, the plaintiff was nonsuited.—*S. D. A. Sel. Rep. 16th June 1841, vol. 7, p. 37.*

## SECTION XX.

*Suits under Regulation 2, 1819, Section 30—Cases preferred directly to the Collector—Proceedings of the Collector in both classes of cases.*

Parties deeming themselves entitled to the rent of lands in their estates now held free, may prefer their claims in the first instance to the collector.

280. Provided also, that proprietors, farmers or talookdars, who may deem themselves entitled to the revenue of any land held free of assessment in their respective estates, talooks or farms, or individuals claiming as aforesaid to hold lands free of assessment shall be at liberty to prefer their claims in the first instance to the Collector. Provided further, that the party so preferring his claim directly to the Collector, shall, in his petition to the Collector state the particulars of his claim, and the grounds on which it is founded, in like manner as if the suit were instituted in a Court of judicature; and the petition shall be written on stamped paper of the value prescribed for petitions of plaint in suits instituted in those courts.—*Reg. 2, 1819, Sect. 30. Cl. 1.*

Collector how to proceed when such suits are referred to him, or instituted before him.

281. On receiving a petition of the above nature from any proprietor, farmer or talookdar, claiming the revenue of any land held free of assessment in their respective estates, or on a reference being, in such case, made from a Court of judicature, the Co

lector shall serve on the defendant a written notice, containing a short statement of the demand, and requiring the defendant to attend in person, or by vakeel, within the period of one month, and to produce all sunnuds or other documents in virtue of which he may possess the lands, and under which they may have been, or may be claimed to be held free of assessment.—*Reg. 2, 1819, Sect. 30, Cl. 2.*

282. When the defendant shall appear and deliver up his title deeds, the Collector after allowing the claimant to inspect and examine them, shall call upon him to deliver, within the period of seven days, a full statement of the grounds on which, with reference to the documents, he may consider the tenure of the defendant invalid, and the lands liable to assessment, with all documents on which his claim to the revenue of them may be founded.—*Ibid., Cl. 3.*

Continuation of the same subject

283. When the claimant shall have delivered in the said statement and documents, the Collector shall proceed to investigate the case, and to record his final judgment on it, in the same manner and with the same powers as in cases in which he may himself propose to assess lands on account of Government.—*Ibid., Cl. 4.*

Idem.

284. If the claim made under Regulation 2, 1819, Section 30, shall be against any individual singly or jointly with Government, the Collector shall serve him with a notice containing a statement of the demand, and requiring his attendance in person or by vakeel duly authorized, within the period of one month, with any papers or evidence he may desire to produce in denial of the claim; and on the appearance of such defendant the Collector after allowing him to inspect and examine the claimant's petition of plaint and the writings therein referred to, shall call upon him to deliver within the period of seven days a statement of the objections he may desire to urge against the claim. In such cases no other pleadings shall be required from the parties than a plaint and answer, but it shall and may be lawful for Collectors to receive and record such subsidiary pleadings as may appear requisite for the elucidation of the merits of the claim. Collectors shall proceed to investigate every such case as soon as possible after the answer of the defendant shall be received; giving however, as aforesaid eight days previous notice to the parties, of the day on which he may propose to bring it to a hearing. Provided, that in cases wherein the parties concerned, or their authorized representatives shall desire or consent (the same being signified in a written petition or ikrarnamah to be filed with the proceedings,) to have an immediate decision, whether the case shall originate in a claim on behalf of Government or in the suit of an individual, and whether the proceedings of the Collector shall be held under the provisions of Regulation 2, 1819, or under those of this or any other Regulation touching the matter, it shall be competent to the Collector to proceed forthwith to the investigation and decision of the case without issuing any formal summons or notice.—*Reg. 9, 1825, Sect. 5, Cl. 11.*

But if the claim be against an individual singly or jointly with govt, the collector is to serve the party with a notice containing a statement of the demand, and requiring his attendance with the necessary documents and evidence.

Defendant's answer to be given within seven days

In such cases no further pleadings to be required but collectors may receive and record such subsidiary proceedings as are calculated to elucidate claims

After the receipt of the defendant's answer, eight days notice to be given of the day on which it is proposed to bring it to a hearing.

Proviso in case an immediate decision shall be petitioned for

285. The parties shall respectively be subject to the same rules in regard to the use of stamped paper, on summoning witnesses and filing exhibits, as are prescribed for suits instituted in the Zillah or City courts.—*Reg. 2, 1819, Sect. 30, Cl. 5.*

Parties subject to the same rules regarding stamped paper as in regular suits

Value of the stamp on which the petition of plaint should be written in suits in which, if the lands were resumed, govt. would get none of the rents

286. The Court, understanding your first question to have reference to cases under Regulation 2, 1819, Section 30, in which Government would not be entitled to any revenue from the land, if resumed, are of opinion, that the petition of plaint should be written on stamped paper of the value prescribed for rent-free lands, whether the claim be by an individual against a *zemindar* to hold land on a rent-free tenure, or by a *zemindar* to resume land held on an illegal rent-free tenure.—*Con. 576, 1st Oct 1830, par. 2.*

The provisions of reg 3, 1824, not to extend to cases of the nature specified in the several clauses of sec 30, reg 2, 1819, except when such cases involve the rights of govt to subject lands to assessment

In cases of the above description, in which govt may be a party, the collector to investigate & decide in the mode prescribed in the preceding section

All other cases falling within the provisions of sec 30, reg 2, 1819, in which govt is not itself a party, shall be heard and determined under the rules therein enacted, as modified by sec 5, reg 9, 1825

Suits to resume lands held free, under 100 begahs in estates purchased by govt must be instituted before the collector under reg 2, 1819, 301

287. It is hereby declared and enacted, that the provisions of this Regulation are not intended and shall not be construed, to extend to cases of the nature specified in the several clauses of Section 30, Regulation 2, 1819, save and except when such cases may involve the rights of Government to subject to assessment all, or any portion, of the lands, in respect to which the action may be brought. In cases of the above description, in which the Government may be a party, whether instituted in the first instance before the Collector, or referred to him by the court, the Collector shall proceed to investigate and decide in the mode prescribed in the preceding section of this Regulation: the several clauses of which shall be held to apply to such suits and all other cases falling within the provision of Section 30 Regulation 2, 1819, in which the Government is not itself a party, shall be heard and determined under the rules therein enacted, and the subsequent modifications of them declared in Section 5, Regulation 9, 1825—*Reg. 3, 1828, Sect 5.*

288. We beg leave to state, for your information and guidance, that it has been ruled by us that all suits to resume or to hold *lakhsij* tenures not in excess of one hundred begahs situated within an estate purchased on account of Government, must be tried by the Collector of the zillah with reference to Section 30, Regulation 2, 1819, and Section 5, Regulation 3, 1828, that consequently, in future, claims of the above nature should not be brought under the provisions of Regulation 7, 1822, and Section 5, Regulation 9, 1825, but officers in charge of the purchased estates will bring their actions before the Collector of the zillah to which the lands may attach, a contrary procedure involving the liability of the reversal of the award.—*Cir. Ord. Spec. Commr. 16th June 1842.*

Stamped paper is not necessary in such suits

289. In continuation of our Circular order, under date the 5th September last, we beg to communicate to you that as the provisions of Clause 10, Section 5 Regulation 9, 1825, appear to be in modification of the rules regarding the exigency of stamped paper prescribed by Regulation 2, 1819, it follows that in all cases originating with the officers of Government for assessing lands held free of rent, stamped paper is not necessary and it is not to be used on the institution of suits of the nature adverted to in our recent Circular order, dated the 16th ultimo, No. 249.—*Cir. Ord. Spec. Commr. 14th July 1842.*

## SECTION XXI.

*Suits under Regulation 2, 1819, Section 30—Collector's Report—the Court's Decision—Appeal therefrom.*

290. In cases in which Government may not be itself a party, and in which the suit may have been originally instituted in a Court of judicature, the Collector, on closing his proceedings, shall transmit them, with all documents therein referred to, to the court by which the reference may have been made, recording his sentiments on the case as prescribed in Sections 20 and 21 of this Regulation, and the Court shall proceed to decide the case, after calling for such further evidence as may appear necessary. Provided, however, that no summons, accounts or other documentary evidence of any kind, which may not have been produced before the Collector, and for not producing which the party may not have assigned a sufficient cause, shall be received by the court.—*Reg. 2, 1819, Sect. 30, Cl. 6.*

The collector's proceedings in suits referred to him to be returned to the court with his sentiments.

The court will then decide the case.

291. Suits referred to the Collector under Clause 1, Section 30 of the Regulation above quoted, which are referred, not for decision but for report only, should not be considered as having been transferred from the file of the Judge in consequence of such reference; and therefore, on their being returned with the required report from the Collector, the Judge should proceed to try and decide them in like manner, as if no such reference had been made. From this you will perceive, that the practice of your predecessor in treating such description of cases, when returned with the report of the Collector, as actually decided, in permitting them to remain as decisions until appealed from, and then entering them under the head of miscellaneous case, was irregular.—*Con. 450, 30th March 1827, par. 2.*

The reference to the collector being for report, and not for decision, the case must remain on the judge's file, and when returned by the collector must be tried and decided as if no reference had been made.

292. A Collector having returned to the Zillah court, without the prescribed report, a suit referred to him under the provisions of Section 30 Regulation 2, 1819, which was then decided by the Principal Sudder Ameen and zillah Judge in the absence of such report, the Sudder dewanny adawlut set aside the decisions as incomplete, and remanded the case with instructions to make a second reference to the Collector.—*S. D. A. Sel. Rep. 21st June 1842, vol. 7, p. 107.*

A collector having returned a suit referred to him without a report, which was then decided by the civil courts, the S. D. A. remanded it for a second reference.

293. The Collector cannot delegate to his assistant the judicial duties delegated to him by the Judge under Section 30, Regulation 2, 1819.—*Con. 603, 21st Oct 1831.*

The collector cannot delegate the duties thus referred to him, to his assistant

294. With reference to paragraph 2 of my letter to your address, dated the 30th November last, I have the honour to request the favour of being furnished with the orders of the Court regarding my competency to dispose of cases under Section 30, Regulation 2, 1819, on which I have myself reported in my former capacity of Collector. The cases of this nature are of the longest standing of any in court, and I therefore feel desirous of having them disposed of.—I am directed to acknowledge the receipt of your letter of the 25th ultimo, and in reply to inform you that the Court are of opinion you are competent to dispose of the cases therein referred to.—*Con. 779, Cal. C. 12th April, West. C. 10th May 1833.*

A collector who has reported on cases under this section may afterwards himself decide them as judge.

Course to be pursued where a collector in a case under this section referred to him, or decided by him, has omitted to do what he is required by law to

295. Held on a reference from the Judge of West Burdwan involving a construction of Clauses 6 and 7, Section 30, Regulation 2, 1819, that should it be found that the Collector has omitted to perform any act which he was required to do by law, and has either forwarded his report according to Clause 6, or passed a decision under Clause 7, as the case may be, without such defect being remedied, thereby precluding the Judge who may decide, or hear in appeal, the case, from proceeding with and adjudicating it in a legal manner, the latter officer would be authorized, and it would be his duty to return the proceedings, pointing out to the revenue officer his want of conformity to the law applicable to the case, and desiring him to rectify the error or supply the omission, and on his refusal, the Judge should bring his conduct to the notice of Government. In no case, however, except those in which such a course might be found essential to enable him to proceed legally, ought the Judge to follow it, as the terms of Clause 6 of the Section and Regulation in question sufficiently provide for such other occasions as may arise.—*Con. 1245, Cal. C. 23d Aug., West. C. 13th Sept. 1839.*

A regular appeal lies as a matter of right from the decision passed by a Zillah judge in a suit in which the collector has reported.

296. In a suit brought in the first instance in a Zillah court, under Clause 1, Section 30, Regulation 2, 1819, and decided by that court under Clause 6, after receiving the report of the Collector made in pursuance of the latter clause, is a regular appeal open to the Provincial court from such decision, or can the appeal be admitted on special grounds only?—I am desired to communicate to you the opinion of the Court, that the parties in the suits therein referred to are entitled, as a matter of right, to a regular appeal from the decision of the Zillah court.—*Con. 127, 28th July 1826.*

Course to be pursued when it appears on appeal that a court has decided a case under this section, which it have been referred to without making a reference.

297. Supposing the Zillah court to try and decide a suit instituted under the clause and section above cited, without making the reference therein required, does such omission invalidate the whole proceeding and decision of the Zillah court, and render a new trial necessary *ab initio*, or what is the proper course to correct the error?—Under the circumstances therein stated, a new trial would not be necessary, but that, on such occasions, your court should send back the case to the court below for re-trial, after having obtained the Collector's report. This course of proceeding appearing to be a sufficient remedy for the defect, without exposing the parties to any increase of expence.—*Ibid.*

From the decision of a collector under cl. 4, in cases referred to him direct, there may be an appeal *in forma pauperis*.

298. Held that an appeal *in forma pauperis* may be preferred from the decision of a Collector under Clause 4, Section 30, Regulation 2, 1819.—*Remarks.*—The report of the Collector, under Clause 6, Section 30, Regulation 11, 1819, on a case referred by a Court of judicature, is “a summary judgment,” (see Circular order, No. 95, dated August 30th, 1833,) and differs from his “final judgment” under Clause 4, which is subject to an appeal to the Civil court by Clause 7 of the enactment cited.—*Rep. Sum. Cases, 10th Feb. 1815, p. 63.*

The reference of a case to a Sudder Ameen after the collector has reported on it, is a ground for a special appeal.

299. The fact of a case being referred to a Sudder Ameen after having been reported on by the Collector, was held to be a sufficient ground for the admission of a special appeal, with a view to determine the legality of the proceedings.—*Con. 199, 27th March 1829.*

## SECTION XXII.

*Suits under Regulation 2, 1819, Section 30—Appeal from the Collector's Decision, when the case is preferred to him in the first instance.*

300. In cases of the above description, which may have been preferred directly to the Collector, if either of the parties shall be dissatisfied with the decision passed by that officer he shall be at liberty to appeal to the Zillah or City court by a petition written on stamped paper of the value of one rupee: provided however, that no such appeal shall be received, unless preferred within the period of three months from the date of the Collector's decision, or on good and sufficient cause being shewn for a further delay.—*Reg. 2, 1819, Sect. 30, Cl. 7.*

If the claim shall have been preferred in the first instance to the collector, the parties may appeal to the zillah court.

301. I am directed to communicate to you the opinion of the Court, that with reference to the value of the stamped paper, on which the appeals referred to in your letter are directed to be written by the clause and section of the Regulation cited, (Clause 7, Section 30, Regulation 2, 1819,) the appeals should be considered summary in as far as relates to the fees to which the pleaders employed in such suits may be entitled; but that, with reference to Clause 12 of the same section, the Court consider that the trial and decision of such causes should be regulated by the mode of procedure observed in a regular appeal. Under the opinion above expressed, and with reference to the rule contained in Clause 3, Section 9, Regulation 19, 1817, it will of course be requisite that a deposit be made in the first instance for the fees of the pleaders employed in such appeal.—*Con. 338, 18th May 1821.*

These appeals are summary as relates to the fees of the pleaders employed, but the mode of procedure must correspond with that observed in a regular appeal.

302. Appeals from the decisions of Collectors in cases instituted before those officers in the first instance, should be considered as regular appeals, and entered in the monthly and annual statements as appeals under Regulation 2, 1819.—*Con. 150, 30th March 1827.*

These appeals are to be considered as regular appeals.

303. Section 2, Regulation 10 of 1829, the Court observe, rescinds all Regulations and parts of Regulations then existing in regard to the collection of stamps, and as it contains no provision exempting Clause 7, Section 30, Regulation 2 of 1819, from its operation, the latter enactment must be held to have been repealed by it equally with all other laws on the same subject; and it having been ruled by the two courts, with reference to the provisions of the Regulation first cited, and in consequence of Section 8, Schedule B, Regulation 10 of 1829, making no exception in favour of petitions for special appeals in cases of the nature of those under consideration, that full stamp duty is leviable thereupon, the Court consider that, by a parity of reasoning, petitions for a regular appeal in such cases as well as the pleadings, exhibits, &c. connected therewith are also chargeable with the full amount of duty, in the same manner as all other regular suits instituted in the established Courts of civil judicature.—*Con. 987, 25th Sept. 1835, par. 3.*

In this regular appeal, the petition, pleadings, exhibits, &c. must be charged with full stamp duty.

304. I am directed to inform you that the provisions of Clause 3, Section 16, Regulation 5, 1831, are applicable only to appeals from the decisions of Moonsiffs, Sudder Ameens and Principal Sudder Ameens: appeals from the decisions of Collectors under Clause 7, Section 30, Regulation 2, 1819, must therefore be taken up and tried under the rules in force prior to the enactment of the clause first cited.—*Con. 1076, West. C. 10th, Cal. C. 24th Feb. 1837.*

These appeals must be decided by the rules in force prior to the enactment of reg. 5, 1831.

The judge will then decide.

305. The Judge on receiving such petition shall require the Collector to transmit all the proceedings held by him in the case with the documents therein referred to, and shall proceed to investigate and decide on the case in like manner as if it had been originally instituted in the court, and referred by it to the Collector.—*Reg. 2, 1819, Sect. 30, Cl. 8.*

From the decision of the zillah court, the parties are entitled as a matter of right to a regular appeal

306. The parties referred to in the seventh and eighth clauses of Regulation 2, 1819, Section 30, are also entitled, as a matter of right, to a regular appeal from the decision of the Zillah court.—*Con. 155, 20th July 1827.*

### SECTION XXIII.

*Suits under Regulation 2, 1819, Section 30.—Cases in which a reference is to be made to the Board of Revenue.*

In what case the proceedings to be submitted by the collector to the board of revenue.

307. In all cases in which Government may be the defendant, or in which the revenue of the lands claimed may form part of an estate liable to a variable assessment, the Collector shall, on closing his proceedings, submit them to the Board of Revenue, or other authority exercising the powers of that board, for their decision. In such cases, if the suit shall have been referred by a Court of judicature, the Collector shall postpone the transmission of his return to the reference, until he shall receive the orders of the board, or other authority aforesaid, and if the claim shall have been originally preferred to the Collector, the Courts of judicature shall not interfere until the decision of the board shall have been passed: provided, however, that in all such cases the decision of the board shall be recorded in a Persian roobukaree, and transmitted to the Collector in that form for the information of the parties.—Provided further, that in cases in which the claim may have been originally preferred to the Collector, the party, if dissatisfied with the decision of the board, shall be at liberty to appeal to the court by which the case may be cognizable, any time within the period of three months from the date on which the board's decision may have been communicated to such party or to his vakeel, or in their absence, from the date on which the roobukaree containing the board's decision may have been brought on the Collector's record of the case.—*Reg. 2, 1819, Sect. 30, Cl. 9.*

Decision of the board how to be communicated

Parties dissatisfied, at liberty to appeal to the proper civil courts, within specific periods.

If no such appeal be preferred, the decision to be final

And to be executed by the courts

308. If the party shall not apply to the court within the said period, and shall fail to show good and sufficient cause for the delay, the decision of the revenue authorities shall be final, and shall, on application of the party in whose favor it may have been passed, be carried into effect by the Courts of judicature, in the manner in which the decrees of courts are executed.—*Ibid, Cl. 10.*

Provido.

309. Provided also, that in cases in which the right of resuming the revenue of lands held free of assessment, or of recovering possession under such a tenure of lands which may have been subjected to assessment, shall have been adjudged by the revenue authorities, the courts shall in like manner carry the decision of the said authorities into immediate effect, notwithstanding the admission of an appeal therefrom, unless the party

so applying shall give good and sufficient security for the payment of the mesne profits accruing from the lands under dispute.—*Reg. 2, 1819, Sect. 30, Cl. 11.*

310. In cases of the above description, which may be decided by the Courts of judicature, in appeal from the decision of the revenue authorities, whether the claim be preferred in the first instance to the court, or Collector, a special appeal only shall be admitted by the superior court, excepting always, cases which from their amount may be appealable to the King in Council.—Provided also, that the rules contained in Section 26 of this Regulation, shall be applied to all appeals of the above nature.—*Ibid, Cl. 12.*

A special appeal only to lie from the decision of the civil court.

311. In modification of the rules contained in Section 26, and Clause twelfth, Section 30, Regulation 2, 1819, the special appeals from the decisions of the zillah Judges therein provided for shall, from and after the introduction of Regulation 5, 1831, into any district, lie to the Court of Sudder dewanny adawlut.—*Reg. 7, 1832, Sect. 13.*

Special appeals from certain decisions of the zillah Judges shall lie to the S. D. A.

#### SECTION XXIV.

*Suits under Regulation 2, 1819, Section 30—Cognizance of such Suits by Principal Sudder Ameens.*

312. Such suits as are referrible to the Collector under Regulation 2, 1819, Section 30, are not cognizable by the Sudder Ameens or Moonsiffs.—*Cir. Ord. Cal. and West. C. 30th Aug. 1833.*

Suits under sec. 30, reg. 2, 1819, are not cognizable by the sudder ameens or moonsiffs.

313. The Court desire me to add, that the arguments advanced in Circular order, Sudder dewanny adawlut, No. 95, dated 30th August, 1833, for excluding from the jurisdiction of Moonsiffs, claims preferred to the revenue of *lakhray* land, under the provisions of Section 30, Regulation 2 of 1819, remain unaffected by Act VI. of 1843, and that suits of that nature must be considered, as heretofore, beyond the competency of a Moonsiff to determine.—*Cir. Ord. 8th Oct. 1844, par. 3.*

Suits under that section must be considered, as heretofore, not cognizable by moonsiffs.

314. And it is hereby enacted, that it shall be competent to every zillah or city Judge within the said territories to refer for trial and decision, any original suit preferred under the provisions of clause first, Section 30, Regulation 2, 1819 of the Bengal Code, to any Principal Sudder Ameen, anything in the existing Regulations to the contrary notwithstanding.—*Act XXV. 1837, Sect. 3.*

Zillah or city judge may refer to any P. S. A., any original suit preferred under the provisions of cl. 1, sec. 30, reg. 2, 1819.

315. All suits under Section 30, Regulation 2, 1819, referred to a Principal Sudder Ameen, will be sent as heretofore to the Collector of the district for investigation and report. The Collector on closing his proceedings will transmit them under Clause 6, Section 30, Regulation 2, 1819, to the Principal Sudder Ameen for decision.—*Cir. Ord. Cal. and West. C. 23d Feb. 1838, par 3.*

All suits under this section referred to a P. S. A. must be sent to the collector for report.



## SECTION XXV.

*Suits in which Government has been made a Party.*

Govt. not liable for errors of the courts of justice, whether revenue officers be or be not employed in executing the court's order.

316. It is hereby declared and enacted, that Government is not, and shall not be held liable for any error, or irregularity which may have occurred, or shall occur in any order, proceeding, or decree of any Court of judicature, whether a revenue, or other officer of Government may or may not have been, or shall or shall not be employed, in giving effect to the order, proceeding, or decree deemed to be erroneous or irregular. Nor shall any officer of Government be held liable for any thing done, or suffered in conformity with an order, proceeding or decree of a court as aforesaid, and if any person or persons shall sue Government or any officer of Government for any thing done or suffered under an order, proceeding or decree of court as aforesaid, such person or persons shall be nonsuited, with costs. The same principle is and shall be held applicable to all orders, proceedings, or decrees made, held, or passed by any public officer, in virtue of powers vested in him for the judicial cognizance of any pleas, suits, complaints, or informations whatsoever, unless otherwise specially provided.—*Reg. 11. 1822, Sect. 38.*

Course to be pursued in suits brought before the courts of the nature referred to as above in sec. 38.

317. Doubts appearing to exist as to the proper course of proceeding to be observed by the Zillah and City courts, in suits brought before them of the nature of those referred to in Section 38, Regulation 11 of 1822, wherein the plaintiff may have made the Government, by its officers, a party, the prohibition contained in that section notwithstanding; I am desirous to inform you that in such cases, on the suit being first brought up for a hearing agreeably to the rule contained in Section 10, Regulation 26 of 1814, it should be pointed out to the plaintiff or his vakeel, that he had rendered himself liable to be nonsuited for improperly making the Collector, or other officer of Government, a defendant in his official capacity, and if he should plead that he had done so from inadvertence, and it should appear to the satisfaction of the Court that the act was not wilful, and had not proceeded from any fraudulent or other improper motive, he should be allowed to file a supplemental plaintiff withdrawing his claim against the Collector or other Government functionary in his official character, when it would be competent to the Judge to proceed with the suit against the other defendants, and either to dispose of the case himself, or to refer it to any of the subordinate courts by whom it might be cognizable under the general rules in force.—*Cir. Ord. Cal. C. 7th July, West. C. 18th Aug. 1837.*

When the collector has been improperly made a defendant, the court should allow the plaintiff to withdraw the collector's name in a supplementary plaint.

318. When the Collector in his official capacity has been improperly made a defendant, the court before nonsuiting should give the plaintiff the option, if he did not appear to be actuated by an improper motive, of filing a supplementary plaintiff and withdrawing the Collector's name.—*Con. 1075, West. C. 13th Jan, Cal. C. 21st Feb. 1837.*

In an action for the recovery of property, attached by an ameen, if the collector is made a party, the plaintiff must be nonsuited.

319. In an action for the recovery of property attached by an ameen appointed by the Collector under instructions from the Civil court, the plaintiff, in making the Collector a party to the suit, would be liable to a nonsuit under the provisions of Section 38, Regulation 11, 1822.—*Rep. Sun. Cases, 5th Feb. 1835, p. 6.*

The principle of reg.

320. In continuation of the Circular order of the 7th ultimo, No. 206, I am directed by

the Court to inform you that the principle laid down in Section 38, Regulation 11 of 1822, relative to cases in which the Government or its officers may have improperly been made a party, is held to be applicable to suits of the nature of those described in Section 31, Regulation 7 of 1822, sec. 38, is applicable to suits described in reg. 7, 1822, sec. 31.

1822.—*Cir. Ord. Cal. C. 18th Aug., West. C. 15th Sept. 1837.*

321. The Court observe, however, that in all cases, in which the Collector may be made a party in his official capacity, whether against law or not, he must on being served with the prescribed notice, either defend the suit in the usual manner, whatever may be the nature of the plea that he may put in, either denying the jurisdiction, or otherwise, or take the consequences of allowing the cause to be tried *ex-parte*; and they are of opinion that where, in the former case, he may file his answer through the Government vakeel, the court trying the suit, on non-suiting the plaintiff's claim with costs, as required by the law above cited, should proceed, as in all other cases, to order the payment of the Government vakeel's fees in the first instance by the Collector on the part of Government, leaving him ultimately to recover the amount, in the usual manner, from the party declared liable for the same.—*Con. 1192, West. C. 21st Dec. 1838, Cal. C. 18th Jan. 1839.*

The collector, when improperly made a party, must either defend the suit, or take the consequences of its being tried *ex-parte*.

He may file his answer thro' the govt. pleader.

His fees to be provided for by the collector.

322. In the prosecution and defence of original suits or appeals, in which Government may be a party in the Zillah courts, the Commissioner of Revenue shall exercise the power and authority of the Board of Revenue, but no decision which may be passed by a lower court, shall be appealed to the Sudder dewanny adawlut, without the sanction of the Sudder Board by whom, in the event of an appeal being preferred, the proceedings will be conducted.—*Cir. Ord. Sud. Bd. Rev. 10th Aug. Rule 22.*

In the prosecution or defence of suits in which govt. may be a party, the commissioner of revenue will exercise the authority of the board of revenue.

323. The revenue authorities, in giving effect to the orders of court, cannot be held liable for the errors or irregularities of the latter.—*S. D. A. Sel. Rep 24th April 1837, vol. 6, p. 157.*

The revenue authorities in giving effect to the orders of courts, are not liable for their errors.

## SECTION XXVI.

*Judicial Powers of the Collectors chiefly when employed in making or revising Settlements, and Jurisdiction of the Civil Courts in these matters.*

324. The Collector's proceedings in forming the registry above directed, shall be founded on the basis of actual possession, and that officer shall, in every instance, be careful to record the precise nature of the authority on which the entries in his books may be made. In conformity with the above principle, it shall be competent to the Collectors or other officers when making or revising settlements, or otherwise deputed to investigate and determine the circumstances of any mehal, and the nature of the tenures connected with it, to correct the errors or omissions of former settlements by admitting to engagements or entering on the public records, the names of persons found in the bonâ fide possession of land, or in the receipt of rent under a proprietary title, and in such cases the Collector will hold an official proceeding, explaining fully the grounds on which he may act.—*Reg. 7, 1822, Sect. 11.*

Collectors forming such registry to proceed on the basis of actual possession.

In estates held under putteedaree, bhyachara or the like tenure, collectors may in certain cases, make a fresh allotment of the revenue & charges payable by the several proprietors

325. In cases in which the proportion of the Government jumma and village expences payable by each proprietor and by each body of proprietors comprised in the several puttees, beheeres and other divisions of an estate held under putteedaree or bhyachara tenure or the like, may have been originally fixed on a measurement of the lands occupied by each, with reference to the quantity in cultivation, and may be liable by the usage of the country to periodical adjustment on the same principle, if the Collector or other officer making or revising the settlement shall be satisfied by examination of the putwarees' accounts or otherwise, that the contributions paid by any proprietor or body of proprietors as aforesaid, are materially in excess of the amount justly demandable from them, it shall be competent to him, with the previous sanction of the board, to cause a new distribution to be made of the revenue and charges payable by each, with reference to the above principle and to such resolutions as Government may have passed relative to the apportionment of the net rent or profits arising out of the limitation of the Government demand, and in the performance of this duty to employ the canoongoe and such person or persons, as he may judge it advisable to appoint, and to settle the jumma payable by the different parties according to the award of such person or persons, or otherwise as shall appear to be just and equitable.—*Reg. 7 1822. Sect. 12, Cl. 1.*

And in certain cases may make a fresh partition of the land

326. In like manner in cases in which the several proprietors shall be entitled, not only to an adjustment from time to time of the jumma payable on account of the lands occupied by them, but likewise to a periodical partition of the lands of the village with reference to the share recorded as belonging to each, it shall be competent to the Collector to cause a fresh partition of the lands and adjustment of the jumma to be made as above prescribed, and at the same time to fix and declare the period from which the arrangement as finally settled is to have effect, and to adjust the claims of the parties relative to the revenue intermediately paid by them as may appear equitable.

Cases wherein parties affected by collector's decision may contest it in the adawlat

Provided however, that no such partition or adjustment shall be final, until confirmed by the Board of Commissioners, or other authority exercising the powers of that board: provided also, that if any parties shall dispute the existence of the usage under which the partition of the lands shall have been made, and shall claim to be restored to possession of the lands which the Collector may have transferred to another, or shall consider himself entitled to the benefit of a new partition of the lands comprised in the mahal to which he may belong in any case in which the Collector may have refused to order it, it shall be competent to the said party, to bring a regular suit in the Zillah court against the person or persons to whom the lands may have been transferred, or the person or persons who may resist the partition, to try the justness of the Collector's decision; but if the existence of the usage shall be admitted or established, it shall not be competent to the Courts of judicature to question the accuracy of the partition of the land or adjustment of the jumma, and whenever the decision of a Collector for the partition of any land shall be set aside, it will of course belong to the revenue authorities to readjust the jumma with reference to the interests of the parties as defined and settled by the final decision of the Courts of judicature, and to the conditions of the tenure, and to any general or special resolution of Government

On what points decision of revenue officers to be conclusive

relative to the distribution of the net rent or profit arising out of the limitation of the public assessment.—*Reg. 7, 1822, Sect. 12, Cl. 2.*

327. Collectors making or revising settlements shall, in cases in which any dispute may exist in regard to the nature of the tenure of any person occupying the soil, be competent to declare in an official proceeding to be incorporated in the roobukaree of settlement, the nature and extent of the interests actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at length, with specification of any examination he may take for his satisfaction, the grounds of his determination; so also in cases of dispute regarding the extent of the interest belonging to any sharer in a village or villages held under putteedaree, bhyachara or the like tenure, such sharer having actual possession of a portion of such village or villages, or being in the actual receipt as proprietor of a share of the joint profits of the land it shall be competent to the Collector to decide the point in the first instance in his roobukaree of settlement and to enforce his decision, leaving the party who may deem himself aggrieved to seek redress by a regular suit in the courts to try the right; but nothing herein contained shall be construed to authorize the courts to interfere with the decision of the Collector in regard to the amount or proportion of jumma to be assessed on any parcel of land, or in respect to the quantity and description of land to be assigned in partition to the holder of any specific share of a joint estate.—*Ibid, Sect. 11. Cl. 1.*

Collectors making or revising settlements may declare the nature & extent of interests possessed by persons occupying land.

Where lands held in putteedaree, bhyachara or the like tenure, collectors may decide disputes as to the extent of interest belonging to any par-cener, and may enforce his decision.

Subject to appeal to the adawlat

328. The above rule shall not be construed to empower Collectors, unless otherwise authorized, to take cognizance of any claim to receive a larger portion of the common profits than the claimant has hitherto enjoyed, or to hold a larger portion of the village or villages than he has hitherto occupied.—*Ibid Cl. 2.*

Collectors shall not under the above rule take cognizance of claims to larger profits or more land than claimant may have hitherto enjoyed or held

329. The decisions passed by the Collectors under the above power if not altered or annulled by the board or by Government shall be maintained by the courts, unless on investigation in a regular suit it shall appear, that the possession held under such a decision is wrongful; and nothing herein contained shall be understood to authorize any court to interfere with the decision of the revenue authorities relative to the jumma to be assessed on any mehal or portion of a mehal, or to the extent and description of lands belonging to any mehal, that may be assigned on the partition of the same to the several parceners concerned.—*Ibid, Cl. 3.*

Decision of revenue officers to be maintained by courts, unless proved to be wrong in a regular suit

Courts not to interfere with apportionment of jumma or allotment of land made by collectors, excepting where the principle of collector's decision may be at variance with decree

330. If any person shall complain to a Collector or other officer making or revising the settlement of any mehal, that he has been wrongfully dispossessed from any lands, premises, crops, orchards, pasture grounds, fisheries, wells, water-courses, tanks, reservoirs, or the like, within such mehal, or of the rents, produce or profits of such lands, premises, &c. the like as aforesaid, or that he has been wrongfully disturbed in the possession thereof, it shall be competent to the Collector or other officer aforesaid, to enquire into the matter, and if the party so complaining shall appear to have been in possession in the year preceding that in which the complaint is brought, and there shall otherwise be reason to believe, that he has been violently or wrongfully dispossessed or disturbed, it

In what cases collectors to take cognizance of complaints of wrongful dispossession.

shall be competent to the Collector to restore or confirm him, recording the grounds of his determination in a roobukaree, and the opposite party shall in such case be left to bring a regular suit in court to try the question of right. In like manner should a Collector or other officer as aforesaid find, that there exist in any mehal of which he may be making or revising the settlement, any disputes relative to the possession of lands, promises or the like, which it may be expedient to adjust, it shall be competent to the Collector or other officer aforesaid to pass a decision determining the point of possession, leaving the question of right, if further disputed, to be settled by the result of a regular suit in the adawlut—*Reg. 7, 1822, Sect. 14, Cl. 4.*

Subject to an appeal to the adawlut.

The above provisions to what cases to apply

331. The above provisions shall be held to apply to all cases in which a zemindar or under-tenant, whether farmer or ryot, having by special deed or prescriptive title, a right of occupancy, shall have been wrongfully ousted from the occupancy of lands held and cultivated by him in the preceding year, or in which the rents and profits of any land which were received by such dispossessed party in the preceding year, shall be withheld from him, without a legal award or a voluntary act of the party involving the transfer, renunciation or relinquishment of such rents and profits. But the above rule shall not apply to any case in which the complaining party may have executed any deed, purporting to be a relinquishment of possession, unless it shall have been established by some judicial proceeding, that such deed was extorted by force and terror, nor to any cases wherein the complainant shall have in any way lost or relinquished possession previously to the commencement of the year preceding that in which the complaint may be preferred.—*Ibid, Cl. 5.*

To what cases the rule shall not apply

G. G. in C may grant to collectors making or revising settlements, special authority to take cognizance of claims to the property and possession of land.

332. It shall be competent to the Governor General in Council to grant to a Collector making or revising the settlement of any mehal whether the same may have been held by a lakhiraj tenure resumed, or being malgoozaree, may have become open to re-settlement in ordinary course, special authority to hear, try and determine as above, all claims to the property and possession of the lands lying within such mehal, or the rent or produce thereof, and to give possession to the party who may appear to have the best title, subject to the orders and direction of the board, and further subject as above, to the revision of the Zillah or Provincial court in a regular suit: provided also, that whenever special authority may be given to any Collector as aforesaid, notice of the order of Government shall be published by a proclamation within the mehals, to which the authority so given may extend; and it shall be the duty of the Collectors and the boards to see that such proclamation is duly made. But no decision passed by a Collector under this or any other section whereby such notification is required, shall be disturbed by any Court of judicature, otherwise than after a full and regular investigation of merits on the plea that proclamation was not made.—*Ibid, Sect. 16.*

Collectors making or revising settlements in what cases to take cognizance of claims to property in lands held lakhiraj or at a mukureree jumma,

333. It shall be competent to Collectors and other officers engaged in making or revising the settlement of any purgunnah, mouzah or other local division, on the application of persons claiming a right of property in lands held free of assessment, or at a mukureree jumma, under unquestioned grants from the ruling power, or from the amils or

other officers of Government, and situate within, or adjoining to such purgunnah, mouzah or other local division, to receive, try and determine the claim; and if satisfied that the applicants do possess, or are entitled to possess, a hereditary and transferable property in the land or the produce of rent thereof, the Collector or other officer, with the sanction of Government previously obtained, shall be authorized to conclude a settlement with them on behalf of the lakhirajdar or mokurereedar, for such period as the Governor General in Council may direct, and shall grant to each of the said proprietors pottahs, defining the conditions on which they are to hold their lands, subordinate to the lakhirajdar or mokurereedar.—It shall further be competent to the Collectors, under the orders of the Board of Commissioners, to fix and declare the amount of malikana or other proprietary allowance to be paid by such lakhirajdars or mokurereedars to the said proprietors, in the event of their being divested of the occupancy and management of their lands: provided however, that either party who may be dissatisfied with the decision of the Collector as to the question of the right of property, shall be at liberty to contest the same in a regular suit in the adawlut; but the courts shall not interfere to alter the terms on which the settlement may have been made by the Collector with proprietors, or the amount of malikana granted to such persons.—*Reg. 7, 1822, Sect. 17.*

under valid tendoras, and to make a settlement with the proprietors on behalf of the lakhirajdar, or mokurereedar.

Proviso that an appeal to the adawlut shall be on the question of right of property.

334. The Collector shall in cases of doubt be the judge of the question of jurisdiction, subject to the orders of the board and of Government, and the Courts of judicature shall not disturb possession given by the Collector, except on a regular suit, and on a decision as to the right.—*Ibid. Sect. 18.*

Collectors to be the judges to the question of jurisdiction

335. It shall be competent to Collectors when prosecuting the above enquiries, or hearing and trying the above suits or otherwise, when authorized in that behalf by the board to which they may be subordinate, to require all sudder malgoozars and other persons owning, occupying, managing or cultivating any lands within or in the vicinity of the mehal to which their enquiries may extend, or gathering or disposing of the produce thereof, or collecting, enjoying or appropriating any rent or revenue derived therefrom, as well as the gomashdahs or other agents employed by such persons in the management or cultivation of the land, or in the collection of the rent, produce or revenue thereof, to attend and produce all accounts or other papers which they may respectively possess relative to such lands, produce, rent or revenue, and to examine the said persons on oath, or hulufnamah, to the truth of the accounts produced, or on any other matter relating to such accounts, or regarding the lands, produce, rent or revenue of the mehal, or the rights and interests attaching to such lands, produce, rent or revenue: provided however, that no person shall be compelled to answer on oath or solemn declaration, any interrogation regarding matters wherein he may have an immediate personal interest in concealing the truth, or in uttering what is false, not being an interest arising out of fear, favour, or reward, or any corrupt bargain or agreement with another party.—*Ibid, Sect. 19, Cl. 1.*

Collectors authorized to summon witnesses and require production of accounts.

To examine on oath, or hulufnamah

Proviso that persons shall not be examined on oath on questions immediately touching their own interests.

336. The rules contained in Section 11, Regulation 2, 1819, relative to the mode of serving process on persons who may be required to attend and produce accounts under the provisions of that Regulation, shall be and be held applicable to processes issued by

Rules of reg. 2, 1819, applicable to processes issued by collectors under this regulation.

Also to putwarces and others summoned or examined in cases cognizable under this regulation.

And to all other persons upon whom process may be issued.

Collectors or other officers under the rules contained in this Regulation. In like manner the provisions of Section 12 of the said Regulation shall be applicable to all putwarces, gomashdahs, or other persons, by whom the accounts of any lands regarding which the said enquiries may have been instituted, may be kept, and who after being duly summoned as aforesaid, may neglect or omit to produce any of the accounts required from them, or to give their evidence regarding them, or who may deliberately give a false deposition on oath or solemn declaration when summoned and examined as aforesaid, or who may alter, fabricate, falsify, or mutilate the accounts which they may be required to produce: provided further, that Collectors and other officers employed in the settlement of the land revenue, or in any of the enquiries specified in this Regulation, shall be vested with all the powers and authority which are or may be lawfully exercised by Collectors in cases depending before them under Regulation 2, 1819, and the rules contained in Clause 3, Sections 13, 14, and 19 of the said Regulation, shall be and be held applicable to all persons who may be summoned by any Collector or other officer aforesaid, or who may resist the process of a Collector issued under the rules of this Regulation, or who may refuse to take an oath or subscribe a solemn declaration when required, or who may deliberately give a false deposition on oath, or under a solemn declaration taken instead of an oath, or may cause or procure another to do so.—*Reg. 7, 1822, Sect. 19, Cl. 2.*

Powers specified in secs. 11, 12, 14, 16, 17, 18, and 19 to be ordinarily vested in collectors making or revising settlements.

But G. G. in C. may restrict powers to be exercised on any particular occasion.

Like powers may be specially vested in collectors, though not engaged in making or revising settlements.

Collectors may be similarly vested with special powers to try all suits regarding rent.

Or exaction of rent

The adjustment of accounts between

337. The powers specified in Sections 11, 12, 14, 16, 17, 18, and 19 of this Regulation, shall be ordinarily exercised by Collectors when employed in making or revising settlements of the land revenue, and shall extend to all the lands comprized in the purgumnah in which he may be so employed; but it shall be competent to the Government by an order in council, to be publicly proclaimed in the district, to restrict the authority of Collectors and other officers making settlements in such manner, and to such extent, as he may, from time to time, judge expedient. In like manner it shall be competent to Government to vest such Collectors as may, from time to time, be judged fit, with a special authority to receive, try and determine in the first instance, subject to a regular suit in the adawlut as above provided, all or any of the questions of the nature specified in the aforesaid sections, though the said Collectors may not be engaged in making or revising a settlement of the land revenue, and to vest in such of the Collectors as may be thought proper, authority (either generally or within such limits as may be, from time to time, determined) to receive, try and determine by summary process, all suits for rent which may be preferred by zemindars, talookdars or other sudder malgoozars or farmers of land, or by any person in their behalf against any dependant talookdar, zemindar, under-renter, ryot or other under-tenant of whatever denomination, as well as all applications by ryots and the under-tenants, contesting the demand of a sudder malgoozar or farmer, and all complaints preferred by ryots or other under-tenants of whatever description, against landholders or farmers of land, or their respective agents or representatives, on account of excessive demand or undue exaction of rent, whether levied by distraint or otherwise, as well as all suits relative to the adjustment of accounts between landholders and farmers of land or under-tenants of whatever description, with their sureties, or with

any agents or persons employed by them in the management of land, or the collection or payment of the rent of land, and to all other matters immediately connected with the demand, receipt or payment of the rent of land, whether malgoozaree or lakhiraj, or with the rent of orchards, pasture grounds, and fisheries, commonly denominated phulkur, bunkur and julkur, or with any other asset of the land revenue, not included in the sayar abolished, together with all complaints of the non-delivery of pottahs when demandable under the Regulations, or complaints of the prescribed receipts not being given for actual payment of rent, and generally complaints of any deviation from the Regulations, or from the established usage of the country relative to the matters aforesaid, or any violation of subsisting engagements in disputes respecting the rent and occupancy of land, between landholders and farmers of land, and their under-tenants of whatever denomination.—*Reg. 7, 1822, Sect. 20, Cl. 1.*

landlord and tenant, their sureties and agents.

And touching all matters connected with land, the rents or produce of land, the delivery of pottahs, the violation of engagements and generally all disputes between sudder malgoozars, and farmers and their tenants.

338. The appointment of the Collector to the discharge of the above duties, and the extent of the jurisdiction to be assigned to him, shall be notified by proclamation in the district, after such manner as the Governor General in Council may direct; and after the publication of such notice, all summary suits, actions, applications and complaints of the above nature, and referring to lands or the rents, produce or accessions of land lying within the jurisdiction assigned to the Collector as above, which may be preferred in the Zillah or City adawlut by any sudder malgoozar, zemindar, talookdar, farmer, ryot or other proprietor or under-tenant of land, shall, immediately on being received, be referred for trial to the Collector, to whom also all such summary suits depending at the time shall be transferred; provided also, that in such cases, parties having suits or complaints to prefer of which the cognizance may be vested as above in the Collector, shall be at liberty to prefer them to that officer in the first instance. It shall in like manner be competent to the Governor General to fix by an order in council, the period at which the special powers given as above to a Collector, and the authority to be ordinarily exercised by those officers on the occasion of making settlements, shall cease and determine.—*Ibid, Cl. 2.*

Appointment of collector to exercise the above duties how to be notified.

G. G. may fix by proclamation period for which collectors are to exercise judicial powers under this regulation

339. No complaint or application of the nature specified in the preceding clauses, shall be received by a Collector under the rules of this Regulation, unless the plaint or application shall have been preferred within the period of one year after the cause of action shall have arisen.—*Ibid. Cl. 3.*

Collectors shall not take cognizance of complaints specified in preceding clauses, unless preferred within one year.

340. In summary suits for rents and the like, wherein special rules have been prescribed for regulating the process of the courts, the Collectors shall be guided by the same rules, and shall exercise the same powers and authority as are or may be lawfully exercised by the zillah and city Judges. In other cases falling under their cognizance, according to the provisions of this Regulation, the ordinary process for securing the attendance of the defendant or party otherwise impleaded, shall be to issue a notice reciting the matter, and requiring the defendant or other party to attend in person or by representative, at such time and place as may be made choice of by the Collector for conducting the

Collectors by what rules of practice to be guided, and what processes to issue.



investigation : should any party fail to attend after being served with a notice of the above description, or should the return of the Nazir or person employed to serve the notice be that, after diligent search the party or parties cannot be found, proclamation shall be made in writing to be stuck up at or near the ordinary residence of the party, stating that after fifteen days from the date of publishing the same, the case will be liable to be brought up for trial and judgment, and any party implicated who, having been served with the notice above described, shall fail to attend, or who shall continue to absent himself, will be as much bound by the judgment that may be passed, as if he or they had been in attendance to plead.—*Reg. 7, 1822, Sect. 21.*

Secs 18 & 19, reg 8, 1819, extended and declared applicable to cases tried by collectors under this regulation

341. Sections 18 and 19, Regulation 8, 1819, are hereby extended to all the provinces immediately subject to the Presidency of Fort William, and the provisions of the said section shall be applicable to the proceedings of Collectors held under this Regulation.—Provided however, that whenever it shall be desired to apprehend a defaulter residing out of the jurisdiction of the Collector by whom the suit relative to the alleged arrear may be cognizable the process of arrest shall be served through the Judge of the district where the alleged defaulter may reside.—*Ibid, Sect. 22.*

Collectors cutcherry shall be held to be a court of civil judicature and his decisions shall be deemed to be judicial awards

342. It is hereby declared and enacted, that in so far as concerns the summoning and examination of witnesses, the penalties for false testimony, for resistance of process, contempts, and all other similar matters, connected with cases under cognizance before the Collectors of land revenue, or other officer, by virtue of the powers vested in them by this Regulation, or any other Regulation, whereby Collectors are vested with judicial powers, their cutcherry or office for the time being shall be deemed and held to be a Court of civil judicature.—*Ibid, Sect. 23, Cl. 1.*

Provide

343. Provided also, that the regular suits which may be brought to contest decisions passed by Collectors, under the powers vested in them by Sections 11, 12, 14, 15, 16, 17, 18, 19, and 20, shall be of the nature of an appeal to court in its regular jurisdiction from a summary award. It shall not therefore be necessary for the Collector or other officer of Government to be a party in the action. —*Ibid, Cl. 2.*

Collectors authorized to execute awards made by them

344. Collectors of the land revenue are hereby empowered to execute all awards made by them under the rules of this Regulation, in cases wherein a specific sum of money shall be adjudged to be due, or any costs or damages be awarded; the Collector decreeing the same shall proceed to levy the amount for the party in whose favor it may be adjudged by the process in use for the recovery of arrears of the Government revenue:—provided however, that he shall not sell any lands, houses, or other real property in satisfaction of any judgment passed in favor of any individual, on a summary enquiry. In cases wherein possession of lands, houses, water-courses or the like may be adjudged, it may and shall be lawful for the Collector making the award, to deliver over possession in the same manner and with the same powers in regard to all contempts, resistance, and the like, as are or may be lawfully exercised by the Courts in giving possession to an auction purchaser; and the Zillah or City adawlut shall support the Collectors in the exercise of

the above power, and shall give effect to any orders passed by them in pursuance of it, in the like manner as if the same had been passed by themselves. Collectors are further hereby empowered to place one or more peons, mirdahs, suwars, or the like, to aid in the maintenance of possession for the party to whom it may be awarded, in case of his deeming such a measure necessary or expedient.—*Reg. 7, 1822, Sect. 23, Cl. 3.*

345. It shall and may be lawful for a Collector or other officer exercising the powers of Collector, preparatory to making or revising a settlement as aforesaid, to depute any tehseldar, canoongoe, ameen, or other fixed or temporary officer to any village or mehal, whether the same be managed by a zemindar or farmer, or be held khaus, to enquire into the various matters which such Collector or other officer is required or empowered to investigate, in order to form a settlement in the mode prescribed by this Regulation. Any such Native officer so deputed as above, shall be deemed to be vested with the power of summoning and examining putwarees, gomastahs, or other persons by whom the accounts of the village or mehal may be kept, in the same manner and with the same powers as is provided for officers deputed under Section 25, Regulation 12, 1817. Furthermore, in case the Collector or other officer may so prescribe, the said tehseldar, or other person, shall be empowered to make a measurement of the village or mehal, into which they may be deputed, and to summon any mocuddums, pudhans, ryots or other residents, and to call upon them to point out the boundaries of such village or mehal, and to furnish information as to all matters relating to the land and the rights and interest attaching thereto; and any person contumaciously withholding information from an officer deputed as aforesaid shall be liable, on the same being established to the Collector's satisfaction, to the same penalty as is prescribed for putwarees refusing to attend or give evidence.—*Ibid, Sect. 24, Cl. 1.*

Collectors authorized to depute native officers to make enquiries preparatory to settlement.

346. Provided also, that any person who may, by force or threats, obstruct or resist the execution of any legal process, requisition or order of a Collector or other revenue officer, shall, in addition to the penalties prescribed by the existing Regulations for such act, be liable to a fine not exceeding two hundred rupees, or to imprisonment in the Dewanny jail for a period not exceeding two months; the said fine or other penalty to be adjudged by the Collector after proceeding duly held and recorded, and the sentence to be immediately reported to the board to which he may be subject.—*Ibid, Cl. 2.*

Resistance or obstruction of the process or order of a collector how punishable.

347. Provided further, that all Police officers shall aid and support the execution of all process and orders issued by a Collector or other officer aforesaid, on the responsibility of the officer issuing or executing the same; and if any affray or breach of the peace shall occur in consequence of any resistance or obstruction being made or attempted to be made to the legal process or order of a Collector or other revenue officer, the parties resisting or obstructing such process or order, shall be punishable for the affray or breach of the peace, and the revenue officers shall not be liable to any criminal prosecution on that account.—*Ibid, Cl. 3.*

Police officers to aid and support the execution of process and orders of collector.

348. It shall be competent to the parties in all suits the cognizance of which is hereby vested in the Collectors of revenue to employ any agent, vakeel or representative,

Parties in suits tried by collectors, may employ any vakeels

or agents they think proper.

whom they may think proper to appoint, to act and plead in their behalves, provided such agent, vakeel, or representative, be duly empowered by the parties. The rate of remuneration to such agent or vakeel shall be left to be adjusted between himself and his constituent, but no greater sum shall be awarded on this account for costs payable by the party against whom the judgment may be passed, than what may be deemed by the Collector a fair equivalent for the attendance of such agent.—*Reg. 7, 1822, Sect. 25.*

What pleadings to be required

349. No other pleadings shall be required from the parties in such suits, than a plaint and answer, provided that if the parties should, at any time, wish to file an amended plant or an amended answer, or any explanatory motion, such subsidiary pleadings shall be received.—*Ibid, Sect. 26*

Stamped paper to be used

350. The mooktarnamahs or vakaltnamahs, and the pleadings and final decree in such suits, shall be written on stamped paper of the value of eight annas, whatever may be the amount of the suit, and no fees shall be taken on exhibits tendered in the cause, or for the witnesses required by the parties: nor shall it be necessary for the parties to present a written motion on stamped paper for the filing of such exhibits, or for the summoning of such witnesses.—*Ibid, Sect. 27*

Collectors may try and determine suits in any part of their districts

351. It shall be competent to the Collectors to hear and determine such suits in whatever part of the district they may occasionally be or reside, provided that every hearing and decision be in public cutcherry, or in some other place open to the public, and in the presence of the parties or of their constituted agents or vakeels, if in attendance.—*Ibid, Sect. 28*

Decisions how appealable to boards.

352 The decisions of the Collectors on all such suits shall be appealable to the Board of Revenue or other authority exercising the powers of that board. The petition of appeal shall be presented either to the Collector or to the board, at the option of the party, and shall be written on stamped paper of the value of two rupees, but no petition of appeal shall be received after the expiration of three months from the date of the decision, unless sufficient cause shall be shown for the delay to the satisfaction of the board. Provided also, that the board shall not be required in ordinary cases to go into a regular investigation of the merits, but shall be authorized to dismiss the appeal without further investigation, in all cases in which on a consideration of the final roobukaree of the Collector, they may not see ground to consider the decision of that officer to be unjust, erroneous or doubtful, or his proceedings in the case irregular or imperfect: provided also, that in all cases in which the Collector may dismiss the suit for non-attendance, or on some other ground of default, without an investigation of the merits of the case, it shall be competent to the board to direct a new trial, and in cases in which he may neglect or delay the investigation or decision of a suit without sufficient cause, it shall be competent to the board to interfere and to cause the Collector to proceed upon the enquiry into, and determination of it.—*Ibid, Sect. 29, Cl. 1.*

Board how to proceed on an appeal

In what cases board may direct a new trial or interpose to correct neglect or delay

What pleadings to be required in appeals to boards.

353. No pleadings except the petition of appeal shall be required in such appeals, nor shall any fees be taken by the board on the exhibits originally filed, or on any further documents which the board may think it necessary to call for.—*Ibid, Cl. 2.*

354. If the parties choose to employ in the pleading of such appeals the same agents or vakeels who were previously employed by them in the original suit no further mooktarnamah or vakalutnamah shall be required of them.—*Reg. 7, 1822, Sect. 29, Cl. 3.*

355. The respondent shall receive notice of the appeal, but shall not be compelled to appear in person or by vakeel, and the appeal shall be decided on the merits of the case, notwithstanding his absence, in the same manner as if he had attended.—*Ibid, Cl. 4.*

Respondents to receive notice, but not to be required to appear.

356. The decision of the board shall be final in as far as concerns the result of the summary enquiry of the Collector, and shall be rendered in a Persian roobukaree written on stamped paper of the value of two rupees.—*Ibid, Cl. 5.*

Board's decision to be final as to the result of summary enquiry.

357. Any person however, dissatisfied with the summary judgment of the Collector or the board, and desirous of a more full and formal decision, shall be at liberty to prefer a regular suit to try the merits of the case in the zillah or other similar or superior court in which it may be cognizable. In such cases the summary judgment of the Collector, if not reversed or staid by the board, shall be carried into effect, notwithstanding the institution of the regular suit.—*Ibid, Cl. 6.*

But decision of board and collector may be contested by a regular suit in adawlut.

358. All persons having claims or complaints to prefer of the nature of those cognizable by Collectors, under the provisions of this Regulation, and not wishing to avail themselves of the summary process authorized in that court, shall be at liberty to institute their claims or complaints in the first instance by a regular suit before the local Moonsiff, or in the Zillah or City adawlut, or Provincial court of the division, according as the suit may be cognizable in these courts respectively, under the general Regulations for the administration of civil justice.—*Ibid, Sect. 30.*

Parties having claims cognizable by collectors, and not wishing a summary trial, may in the first instance bring a regular action in the adawlut.

359. Whenever a regular suit may be instituted in a Civil court, with a view to set aside or alter a summary judgment passed by a Collector, the proceedings held on the summary enquiry shall be called for by precept from the court, and filed on the record of the case.—*Ibid, Sect. 31, Cl. 1.*

On appeal to a court against the decision of a collector, the proceedings held by that officer shall be called for and filed in the cage.

360. Provided also, that no such suit shall be cognizable by, or referrible to any Register, Sudder Ameen or Moonsiff, and all Registers, Sudder Ameen and Moonsiffs, shall in cases tried by them be held and bound by the decisions passed, and records prepared, by Collectors or other revenue officers under the provisions of this Regulation, unless the same shall have been rescinded or altered by the board, or by the zillah or other similar or superior court on a regular suit.—*Ibid, Cl. 2.*

No such appeal cognizable by, or referrible to any register, ameen or moonsiff.

361. The Collectors shall transmit to the boards such periodical reports of the causes decided by, or depending before them, as the boards may direct, and the boards will also furnish to Government such abstracts of those reports, and such reports in the cases received and determined by them in appeal, as the Governor General in Council shall, from time to time, require.—*Ibid, Sect. 32.*

Periodical reports to be furnished by collectors to boards.

362. It shall be competent to Collectors or other officers exercising the powers of Collectors to refer to arbitration any disputes cognizable by them under the provisions of this Regulation, as well as any questions or disputes of any kind respecting land or the

Collectors authorized to refer certain cases to arbitration.

tenures therein, or the rights dependent thereon that may come before them—provided the parties consent to that mode of adjustment, and on award being made, to cause the same to be executed. In referring cases to arbitration under the above provision, and in their general proceedings relative to such suits, the Collector shall be guided by the rules contained in Regulation 16, 1793, and the other corresponding enactments, and in Regulation 6, 1813, in so far as the same may be applicable, and shall be competent to vest in the arbitrators the same powers and authority in regard to the summoning and examination of witnesses, and the administration of oaths, and to enforce the orders passed by the arbitrators under such powers, in the same manner as the Courts of judicature are empowered to do; and all awards made on such references shall, when confirmed by the Collector, have the same force and validity as a regular decree of the adawlut, and shall not be liable to be reversed or altered, unless the award shall be open to impeachment on the ground of corruption or gross partiality, or shall extend beyond the authority given by the submission of the parties, and such ground of impeachment shall be established in a regular suit in the Zillah, City or other superior court, wherein the case may be cognizable.—*Reg. 7, 1822, Sect. 33. Cl. 1.*

Force of awards passed on such reference

Matter of arbitration to be distinctly specified in collector's proceedings

363. In referring any dispute to arbitration, the Collector shall be careful to specify in his proceedings, and in the deed of arbitration, to be executed by the parties, the precise matter submitted to the arbitrators, and if the award first made by the arbitrators shall not include all the points submitted to them, or shall be otherwise incomplete, it shall be competent to the Collector again to refer the matter to them with directions to perfect their award.—*Ibid, Cl. 2.*

Canongoes and talseeldars may be employed as arbiters

364. The purgumnah canongoes and talseeldars may be appointed arbitrators in any case referred to arbitration under the above rules, anything in the existing Regulations notwithstanding.—*Ibid, Cl. 3.*

Collectors in what cases to interfere of their own motion in cases of disputed possession.

365. When a Collector or other officer exercising any of the powers vested in Collectors by the rules of this Regulation, relative to complaints of dispossession or disturbance of the possession of lands or premises shall learn either by a reference from the Magistrate or by a report from any other public officer or otherwise, that any disputes exist within the tract placed under his jurisdiction relative to any lands, premises, crops, orchards, pasture grounds, fisheries, wells, water-courses, tanks, reservoirs or the like, likely to terminate in a breach of the peace, it shall and may be lawful for the Collector or other officer aforesaid, to require the contending parties to attend in person or by representative at a stated time and place, and after investigating the case in the presence of the parties or their representatives, or such of them as may attend, or referring it to arbitration as above prescribed, to decide the case in the same manner as if it had been brought before him by the complaint of one of the parties: provided also, that if the fact of previous lawful possession cannot be ascertained, it shall be competent to the Collector, subject to the orders and direction of the board, to decide on the question of right, and to give possession to one of the contending parties, leaving the other party to contest the decision by a regular suit in court. But no such decision shall be passed by any Collector,

And to give possession to one of the contending parties

until he shall have instituted a careful enquiry into the fact of possession, and the board shall be careful to see that this restriction is observed: provided further, that in such cases it shall be competent to the Collector to attach the disputed lands, premises, &c. as aforesaid, and to appoint an officer to the management of the same, retaining in deposit the rents and produce, or such portion thereof, as may remain after discharging any public revenue demandable therefrom, with the charges of management, until one of the contending parties shall be placed in possession.—*Reg. 7, 1822, Sect. 34, Cl. 1.*

Collector may attach disputed lands, &c.

366. Whenever any Magistrates or Joint Magistrates shall have before them any suit, complaint or information relative to any dispute regarding lands, premises, crops, water-courses or the like, which may appear likely to terminate in a breach of the peace, or which it may otherwise be desirable to bring to an immediate decision, it shall be the duty of such Magistrate or Joint Magistrate in cases in which the Collector shall be vested with the cognizance of such actions, to certify the case to that officer, and the Collector will then forthwith proceed to investigate and determine the case under the rules above prescribed: provided also, that in all cases of forcible dispossession, or forcible disturbance of possession, the Collector shall invariably transmit to the Magistrate or Joint Magistrate a copy of the first proceeding held by him in the case, and also a copy of the roo-bukaree containing his final award.—*Ibid, Cl. 2*

Magistrates and joint magistrates in what cases to refer disputes to collector

367. The Collector shall in all such cases use every proper means for inducing the parties to refer their disputes to arbitration, in like manner as the Dewanny courts are directed to do.—*Ibid. Cl. 3.*

Collector to encourage arbitration

368. Whenever the term Board of Revenue or Board of Commissioners may occur in this or any other Regulation, the same shall be held and considered to apply to any board, committee or commission, and to any member of such board, committee or commission that may be vested by the Governor General in Council with the powers and authority of the Board of Revenue, save and except in so far as may be otherwise specially declared and provided. In like manner all rules in this or any other Regulation, whereby any duties or powers may be prescribed for, or vested in Collectors, shall be held and considered to be equally applicable to any officer exercising the authority of Collector, under the orders or with the sanction of the Governor General in Council.—*Ibid. Sect. 35.*

Meaning of the term board of commissioners, &c. as used in this and other regulations.

Rules regarding collectors, to apply to any officer exercising authority of collector under orders from govt

369. It shall be competent to the Governor General in Council to vest any Collector, or other officer exercising the powers of Collector, within the provinces of Bengal, Behar, Orissa, and Benares, with the several powers specified in Section 20, Regulation 7, 1822, in the manner specified in the second clause of that section, within such local limits as may from time to time appear to be advisable: and the several provisions contained, in Section 21, and the fourteen following sections shall apply to the several pergunnahs or other local divisions so placed under the jurisdiction of the Collector, or other officer aforesaid.—*Reg. 9, 1825, Sect. 3.*

The G. G. in C. may vest any collector, &c. with the several powers specified in sec 20, reg 7, 1822, within such limits as may be considered advisable

In such cases the several provisions contained in sec 38, &c. to be considered applicable.

370. Held that Government are competent under Section 3, Regulation 9, 1825, to authorize the revenue authorities, though not employed in revising settlements, to perform all the

Jurisdiction of collector though not employed in revising settlements

acts described in Sections 11, 12, 14, and 16 to 35, Regulation 7, 1822, in any specified tract within the provinces of Bengal, Behar, Orissa and Benares, in the summary adjudication of suits between individuals ;—that the provisions of Regulation 9, 1833, are applicable to adjudications in such parts, made in conformity with those provisions ;—and that therefore the Collector is competent to adjudge claims connected with disputed boundaries in those tracts.—*Con. 1369, West. C. 27th Jan., Cal. C 10th Feb. 1843.*

Declaration in addition to sec 33, reg. 7, 1822, that it shall be lawful for a collector, or other officer employed in making settlements under reg. 7, 1822, to fix, under the instructions of the superior revenue authorities, a period within which the parties to a judicial question pending before him, and referred to arbitration, must produce the award.

371. In addition to Section 33, Regulation 7 of 1822, it is hereby enacted, that whenever any judicial question may be depending before a Collector, or other officer employed in making settlements under the provisions of Regulation 7 of 1822, in which the interests of justice may, in the opinion of such officer, require that the case be decided by arbitration, it shall be lawful for him to fix, under the instructions with which he may be furnished by the superior revenue authorities, a period within which the parties must produce the award.—*Reg. 9, 1833, Sect. 5.*

If the parties refuse or neglect to produce the award within the term fixed, the collector or other officer may summon a punchet for the trial of the matter - punchet how to be composed.

372. In that case, if the parties shall refuse or neglect to produce such award within the term limited, it shall be lawful for the Collector, or other officer, to summon a punchet, to be composed of three or five impartial and otherwise competent persons, of good repute, for the trial of the matter at issue.—*Ibid. Sect. 6.*

Punchets so summoned how to proceed to a decision. The superior revenue authorities to issue rules of practice for the guidance of the collector or other officer as above, or of the punchet

373. After duly considering the statements and evidence offered by the parties, or in case of the default or recusance of either, the statements and evidence produced by the party in attendance, the punchet shall declare their opinions, and judgment shall be recorded according to the sentence of the majority. The superior revenue authorities will, from time to time, issue such rules of practice for the guidance of the officers employed on this duty, or the punchets, as they may consider necessary.—*Ibid. Sect. 7.*

What appeal to be from the decisions of such punchets

374. No appeal shall be allowed from such decisions, which shall be immediately executed and maintained, unless the Commissioner, subject to the control of the Sudder Board of Revenue, should think proper, for any special reason, to direct that the case shall be submitted to another punchet for decision.—*Ibid. Sect. 8.*

Suits brought in any court of justice to set aside decisions under the above rules, to be nonsuited with costs.

375. Any suit brought before any Court of justice to set aside a decision made in conformity with the above rules [Nos. 371 to 374] shall be nonsuited with costs.—*Ibid Sect. 9.*

It is not competent to a revenue officer making settlements under reg. 9, 1833, or any other enactment, to interfere in regard to any suit pending in any court, original or in appeal, at the date of the settle-

376. The first reference formed the subject of the letter of the Western Court, No. 33, dated 4th December, 1831. The question mooted for opinion was as follows :—"A suit is instituted regarding a boundary dispute between two villages, and an ameen is deputed to make local enquiries. Before the decision is given, the Collector decides the disputed boundary : can the court interfere in this decision ; or does it bar any investigation of the merits of the case ?"—The two Courts concurrently ruled\* that under the circumstances stated

\* Calcutta Court's letter, No 51, dated 2d January, 1836.

there was nothing which should operate to interrupt the progress of the suit, or prevent its taking its course.—*Con.* 1128, 5th Feb. 1838, par. 4.

ment, unless the parties apply for its removal to the court of the settlement officer, with a view to its being decided under reg. 9, 1833, secs. 5 to 8.

377. The second reference was that of the Agra Court's letter, No. 41, dated 11th December, 1835. It arose out of a collision of jurisdiction between the Judge of Goruckpore and the settlement officer appointed under the provisions of Regulation 9, 1833, in certain parts of that district.—In this instance it was held by both courts,\* that it was not competent to the settlement officer to interfere with regard to awards of court given previously to the period of his appointment, unless by order of the court, or with the consent of the parties.—*Ibid*, par. 5.

It is not competent to such officer to interfere, under the regulation cited, in regard to any case which may have been already judicially decided by a civil court, originally, or in appeal, unless such interference took place by order of the court, or with the consent of parties.

378. The third case was forwarded for the opinion of this court with the letter of the Western Court, No. 1075, dated 16th December, 1836. The reference of the Judge of Ghazepore was to the following effect :—" A case of disputed boundary between two contiguous estates under settlement is litigating in the Moonsiff's court, and still undecided, when the settlement officer proceeds under the authority vested in him by Sections 6 and 7, Regulation 9, 1833, to appoint a panchaet by drawing lots. In the mean time the Moonsiff gives a decree in favour of one party, and the arbitrators base their award on the said decree, acting upon which the Collector marks off his boundary, and concludes his settlement. Such being the case, is it competent to the Judge to entertain the question in appeal from the Moonsiff's decision, with the chance of course of reversing the arbitration award, or is he precluded from interference by Section 9, Regulation 9, 1833 ?" The Western Court proposed to reply that there was nothing in the explanation to operate to prevent the appeal taking its course. In this opinion the Calcutta Court† did not originally concur. They observed that the award of the panchaet, and the decision of the Collector thereon, being subsequent to the date of the Moonsiff's decree, the award could not be affected by any order the Judge might pass on the trial of the appeal. and that the appeal being in fact a suit brought to set aside the Collector's decision must be nonsuited with costs under the rule contained in Section 9, Regulation 9, 1833. The Western Court in their letter, No. 1105, dated 15th September last, requested that this Court would re-consider the reference. They forwarded further correspondence on the subject of the particular case previously referred, and of other similar cases. They entered at large into the consideration of the subject : and in the 3d paragraph of their letter observed as follows :—"The following general questions appear to arise out of the present correspondence, which it seems desirable to determine for the future guidance of the judicial and revenue officers, and with a view to define the jurisdiction to be exercised by those authorities respectively in cases of the nature of those under reference.—*Ibid*, pars. 6, 7, 8.

No case can be tried by a revenue officer in which the case arose more than a year before the complaint, and then only such cases can be taken up as regard the extent of interest of the parties in possession, and the decision of which is necessary for allotting the govt jumma, leaving old and extraneous claims to be decided by the courts.

379. "1st. Is it competent to a revenue officer, engaged in making settlements under the provisions of Regulation 9, 1833, or any other enactment, to interfere in regard to any case pending before any Court of civil judicature at the date of settlement, either as an original suit or in appeal?—The Western Court were of opinion that it was not competent to the revenue

\* Calcutta Court's letter, No. 95, dated 8th January, 1836

† Calcutta Court's letter, No. 261, dated 27th January, 1837.



officers to exercise the powers described in the first question, unless the parties should themselves apply by petition for the removal of their cause to the court of the settlement officer with a view to its being decided under the provisions of Sections 5 to 8, Regulation 9, 1833.

2d. Is it competent to such officer to interfere under the provisions of the abovementioned Regulations in regard to any case which may have already been judicially determined by a Court of civil judicature, either as an original suit or in appeal?—The Court were further of opinion that the second question must also be determined in the negative, unless the interference took place by order of the Court, or with the consent of the parties.

3d. Does any limitation of time exist under the Regulations, in regard to the cognizance by the revenue officers of disputed private claims brought before them under the provisions of Regulation 9, 1833; or is it competent to those officers to take cognizance of all cases of that nature without reference to the date of the cause of action, which at the time of settlement may not be depending before any Court of civil judicature, or which may not have already been judicially determined by a court of competent jurisdiction?—In regard to the third question, the Western Court ruled that no case could be tried by the revenue officers, in which the cause of action may have arisen more than one year previous to the complaint, and that only such case could be taken up by them as regards the extent of interest of parties in possession, and the decision of which was necessary to the due allotment of the Government jumma, leaving all old and extraneous claims to the decision of the courts: such opinion being in conformity with instructions issued by the Sudder Board of Revenue to the subordinate revenue authorities." On a reconsideration of the whole subject the Calcutta Court concurred in the above opinions as expressed in their letter to the Western Court, No. 3444, of the 3d November last.—*Con. 1128, 5th Feb. 1838, pars. 9, 10.*

Collector making settlements cannot interfere in any case already determined by a court, or with proceedings in execution of a judicial award.

380. It is not competent to revenue officers engaged in making settlements under Regulation 9, 1833, or employed in the manner therein provided, to interfere in regard to any case which may have already been judicially determined by a Court of civil judicature, or to proceedings in execution of a judicial award under which possession of property has been given. The above is of course to be taken with the reservation laid down in Construction 1128, "unless by order of the court or with the consent of the parties."—*S. D. 11 Sel. Rep. 7th Feb 1842, vol. 7, p. 74.*

Cases in which alone the jurisdiction of the civil courts is barred by reg. 9, 1833

How suits brought to set aside the decision of the collector, must be tried

381. Held on a reference from the officiating Judge of Jounpore, that the jurisdiction of the Civil courts is only barred by the provisions of Regulation 9 of 1833, when the proceedings of the Collector, or other officer, engaged in making settlements, are in conformity with the rules prescribed in the enactment; and that when a suit, brought to set aside the decisions passed, and adjustments made by the revenue authorities, acting under the law quoted, is deemed admissible, it must be tried and decided, not with reference to the informality of the Collector's proceedings, but on the merits of the plaintiff's claim.—*Con. 1371, West. C. 7th Nov. 1842, Cal. C. 17th March 1843.*

The decisions of panchaets must be enforced by the revenue authorities.

382. The decisions of panchaets appointed under Regulation 9, 1833, should be enforced by the revenue authorities, the judicial functionaries having no power to carry them into effect.—*Con. 895, West. C. 5th, Cal. C. 26th Sept. 1834.*

## SECTION XXVII.

*Tributary Mehals in Cuttack.*

383. Whereas it is necessary that provisions should be made for receiving, trying and deciding claims to the right of inheritance or succession in certain tributary estates in zillah Cuttack, which were excepted by Section 11, Regulation 14, 1803, from the operation of the general rules for the administration of civil justice, established in the provinces of Bengal, Behar, and Orissa, and whereas the nature of the tenures by which those estates are held, the character of the inhabitants, and other local circumstances, render it expedient that the estates in question should not be subject to partition, but should descend entire and undivided, to the persons respectively having the most substantial claim according to local and family usage; the following rules have been enacted to be in force from the date of the promulgation of this Regulation, in zillah Cuttack.—*Reg. 11, 1816. Sect. 1.*

Preamble.

384. All claims to the right of inheritance or succession, to any of the undermentioned tributary estates, are to be heard, tried and determined in the first instance, by the Superintendent of the tributary mehals in zillah Cuttack

Claims to the right of inheritance or succession to certain tributary estates in Cuttack how to be tried

Killah — Neelgery  
Ditto — Bankey.  
Ditto — Joornoo, alias Duspallah.  
Ditto — Nursingpore.  
Ditto — Angole.  
Ditto — Taleher  
Ditto — Autgurlah.  
Ditto — Keonjur.

Killah — Kindeaparah.  
Ditto — Neahgurlah.  
Ditto — Rampore.  
Ditto — Hindole.  
Ditto — Teegereah.  
Ditto — Burumbah.  
Ditto — Dekenah.  
The Territory of Mohurbunge.

—*Ibid, Sect. 2.*

385. The Superintendent in deciding cases of the above nature, shall be generally guided by the established laws and usages of the respective tributary estates. Provided, however, that the estates above enumerated shall in no case be considered liable to be divided according to the Hindoo law, but shall descend entire to the person having the most substantial claim according to local and family usage.—*Ibid, Sect. 3.*

On what laws and usages such claims are to be decided  
Proviso.

386. The Superintendent is prohibited from taking cognizance of any suit, the cause of action in which shall have arisen antecedent to the 14th day of October, 1803, the date on which the fort and town of Cuttack were surrendered to the British arms.—*Ibid, Sect. 4.*

Suits not cognizable, if the cause of action arose before the 14th Oct 1803

387. The established pleaders of the Zillah court shall attend the Superintendent's court, to be held in the court-house of the Zillah adawlut; and they shall receive the same fees as are authorized on the pleading of causes in the Zillah courts; subject of course to the prescribed rules in the cases of paupers.—*Ibid, Sect. 5.*

The pleaders of the civil court are to attend the superintendent's court, and are entitled to fees

The Hindoo law officer of the zillah court is to expound the Hindoo law when requisite.

388. The Hindoo Law officer of the Zillah court is to expound the Hindoo law, in all cases wherein it may be requisite for the due determination of causes pending before the Superintendent.—*Reg. 11, 1816. Sect. 6.*

Rules regarding the issuing of process by superintendent.

389. All processes issued in suits instituted under this Regulation, shall bear the official seal and signature of the Superintendent; and shall be executed by the officers on his establishment, in like manner as all similar processes issued by the Judge of the Zillah court are executed; and any disobedience and resistance to his process shall be liable to a fine to Government to be fixed by the Superintendent, subject to the confirmation of the Court of Sudder dewanny adawlut; or, if the offender be a landholder or sudder farmer, and the case appear to call for it, by a confiscation of his estate or farm commutable to a fine by the Sudder dewanny adawlut, or Governor General in Council.—*Ibid, Sect. 7.*

Penalty for resistance of process.

Rule to be observed by the superintendent in the trial of all suits instituted under this regulation

390. In the trial of all suits instituted under this Regulation, the Superintendent shall be guided by the general rules prescribed for the trial of civil causes, before the Judges of the Zillah courts, subject to the special provisions contained in this Regulation, or in points not specially provided for, to any qualification of the general rules which may be found expedient, and may be sanctioned by the Court of Sudder dewanny adawlut.—*Ibid, Sect. 8.*

Stamped paper shall not be required, in these suits

391. It shall not be requisite to use stamped paper for the plaints, pleadings, decrees, or any papers relative to suits instituted under this Regulation, nor shall any durkhast on stamped paper be required for the admission of exhibits, or the issue of summonses to witnesses, in such suits, when tried in the first instance, or in appeal.—*Ibid, Sect. 9.*

The value of suits under this regulation is to be estimated according to the *peshkush*, and not the produce.

392. The Court of Sudder dewanny adawlut have had before them your letter, dated the 30th ultimo, stating, that a petition has lately been presented to you by a person claiming to succeed to one of the tributary *mchals*, the *peshkush* of which is 4,780 rupees, 5 annas, 12 gundas, 2 cowries, and the produce of which is stated to be 1,02,000 rupees, 4 annas, 12 gundas; and requesting the opinion of the Court, as to whether the value of the estate sued for should be assumed at the *peshkush* or at the estimated produce.—In reply, I am desirous to communicate to you the opinion of the Court, that in conformity to the first clause of Section 14, Regulation 1. 1814, the value of the property should be assumed at the *peshkush*, which may be held to be the amount of the annual *jumma* payable to Government. Such indeed appears to have been the construction already adopted by your court, as may be seen on reference to the *Dekenal* case, filed on the 17th of October, 1816, and decided in this Court in March, 1825.—*Con. 462, 7th Sept. 1827.*

Deposit to be made on account of the pleader's fee

393. When the plaintiff or defendant may appoint a pleader, to prosecute or defend a suit, under this Regulation, he shall deposit in the court a sum equal to the amount of the pleader's fee, unless from the oath, or solemn declaration of the party, or from the evidence of two credible witnesses, the Superintendent shall be satisfied of the inability of the plaintiff, or defendant to make such deposit; in which case he shall be

Exception in cases of paupers

admitted as a pauper, and the stated deposit shall not be required.—*Reg. 11, 1816, Sect. 10.*

394. In all suits decided and orders passed by the Superintendent under this Regulation, an appeal from his decisions and orders shall lie to the Court of Sudder dewanny adawlut, provided that the petition of appeal be preferred within three months after the decree or order appealed from, shall have been passed.—*Ibid, Sect. 11.*

An appeal may be made from the superintendent's decision to the S. D. A.

395. The petition of appeal shall be presented to the Superintendent, and shall contain a full and explicit statement of the appellant's objections to the decree or order from which he is desirous to appeal. The appellant if not admitted as a pauper under Section 10. shall at the same time tender good security for the payment of any costs which may be adjudged on the determination of the appeal by the Sudder dewanny adawlut, or if unable to give such security, shall make oath or subscribe a solemn declaration to his inability, or adduce two creditable persons to prove the same.—*Ibid, Sect. 12.*

Rules to be observed on admitting a petition of appeal.

396. On receipt of the petition of appeal, with the prescribed security or proof of inability required in failure thereof, the Superintendent shall cause a copy to be made of the decree or order from which the appeal may be required, and within fifteen days shall certify and transmit the same, with the petition of appeal, to the Court of Sudder dewanny adawlut.—*Ibid, Sect. 13.*

Duty of the superintendent on receipt of a petition of appeal.

397. When the Court of Sudder dewanny adawlut may admit the appeal, they will cause a precept to be issued under the seal of the court, and the signature of the Register addressed to the Superintendent, requiring him within such period as may be limited by the precept, to furnish a complete record of all papers received, and proceedings held in the case; and also to call upon the respondent or respondents for his or their answer or to appear in person or by vakeel, within a certain time before the Sudder dewanny adawlut, and deliver his or their answer to that court.—*Ibid, Sect. 14, Cl. 1.*

Course to be pursued if the petition of appeal be admitted by the S. D. A.

398. The Superintendent on receipt of the precept shall comply with the exigency thereof, as required; or in the event of his not being able to carry the same into complete execution within the prescribed period, shall certify the same to the Court of Sudder dewanny adawlut with notice of the period within which a further return will be made.—*Ibid, Cl. 2.*

The superintendent to comply with the exigency of precepts of the S. D. A.

399. It shall be optional with appellants and respondents in appeals to the Sudder dewanny adawlut, under this Regulation, to attend in person, or by vakeel for the prosecution or defence of their appeals before that court; or to deliver their proceedings to the Superintendent of the tributary mehals; who, in the latter case, shall forward them, as soon as received, to the Sudder dewanny adawlut, and communicate to the parties any orders which may be issued by that court.—*Ibid, Sect. 15.*

The parties may plead their own causes in appeal, or may appoint vakeels, or may deliver their proceedings to the supt of the tributary mehals. Duty of supt in such cases.

400. In cases wherein it may appear to the Court of Sudder dewanny adawlut, that the cause in appeal has not been sufficiently investigated, and consequently that further evidence is required for the just determination of it, that court is empowered to refer

The S. D. A. may either refer the cause back to the supt or direct further evidence.

the cause back for further trial and judgment to the Superintendent, or to direct that further evidence be taken and transmitted to the court.—*Reg. 11, 1816, Sect. 16.*

The provisions of sec. 3 declared applicable to the decisions passed by S. D. A.

401. The provisions contained in Section 3, by which the decisions passed by the Superintendent are to be governed, shall be considered equally applicable to the decisions of the Sudder dewanny adawlut in all appeals under this Regulation.—*Ibid, Sect. 17.*

Also the principles of secs. 4, 5, 6, 8, 9 & 10 of this regulation.

402. The principles and several provisions contained in Sections 4, 5, 6, 8, 9 and 10 of this Regulation, shall also be considered applicable to all appeals from decisions or orders of the Superintendent of the tributary mehs in zillah Cuttack which may come before the Court of Sudder dewanny adawlut.—*Ibid, Sect. 18.*

The execution of the decree passed by the Supt. to be postponed if the appellant shall give sufficient security

403. In cases of appeal to the Sudder dewanny adawlut from any decree or order of the Superintendent involving a transfer of property, or any change in the actual possession of property, the decree or order appealed from shall not be carried into execution during the appeal to that court, provided the appellant shall give good and sufficient security for the performance of the final decision, which may be passed upon the appeal, and in no instance shall the Superintendent cause to be carried into execution any such decree or order passed by him, until the period allowed for the appeal may have elapsed.—*Ibid, Sect. 19, Cl. 1*

If appellant fail to give security the decree shall be executed, provided the respondent gives sufficient security

404. In the event of the appellant's not giving security for staying the execution of the decree appealed from, and of its being consequently put into execution whilst an appeal is pending good and sufficient security shall be taken from the respondent for the performance of the final decision which may be passed upon the appeal.—*Ibid, Cl. 2.*

In case neither party shall be able to give the requisite security the estate in dispute shall be attached

405. In case neither party shall be able to give the requisite security, the estate in dispute shall be attached by order of the Superintendent, until the security required shall be received or until the final determination be passed by the Sudder dewanny adawlut upon the case.—*Ibid, Cl. 3*

Previous to the execution of any decree, whether of the Supt., or of the S. D. A., a communication must be made to govt

406. No decree or order whether of the Superintendent of the tributary mehs or of the Sudder dewanny adawlut, involving a transfer of the property or an actual change in the possession of any of the estates enumerated in Section 2 of this Regulation, shall be carried into execution, without a previous communication being made by the Sudder dewanny adawlut to Government, in order that sufficient time may be afforded for the adoption of any precautionary measures which may be eventually judged requisite to support and enforce the execution of the decree or order without hazard to the public tranquility.—*Ibid, Cl. 4*

To what amount the decisions of the S. D. A. shall be considered final.

407. The judgments of the Sudder dewanny adawlut shall be final and conclusive in all appeals heard and determined by that court under this Regulation, within the limitation of appeals to the King in Council, prescribed by the statute 21. George 3. Cap 70, Section 21, viz five thousand pounds or sixa rupees 13,103.—*Ibid, Sect. 20, Cl. 1*

408. If the amount or value adjudged shall, exclusive of costs of suit, exceed the sum of 5,000 pounds or sicca rupees 43,103, a further appeal will be open to his Majesty in Council; and shall be received by the Sudder dewanny adawlut, under the provisions which have been enacted for receiving such appeals in Regulation 16, 1797.—*Reg. 11, 1816, Sect. 20, Cl. 2.*

An appeal to the king in council may be made in certain cases and shall be received by S. D. A.

409. A suit, for the recovery of certain lands situated on the borders or within the tributary estate of Neelghurry, but decreed after a summary investigation by the Magistrate at Balasore to be within that estate, has been preferred to me as Superintendant of tributary meahals by a zemindar subject to the Regulations. As Regulation 11, 1816, does not provide for such cases, and having my doubts whether this is the proper tribunal to which the plaintiff should apply, I have to request that you will obtain the opinion of the Court of Sudder dewanny adawlut whether I should admit the suit on my file or refer the petitioner to the Zillah court.—In reply to your letter of the 28th ultimo, No. 88, I am directed by the Court to inform you, that as the summary enquiry by the Magistrate of Balasore appears to have ascertained that the contested lands lie within the Neelghurry estate, they are of opinion that the assumption should be maintained until the contrary be shewn by a more formal enquiry, which enquiry should be conducted by you on the admission of the suit referred to in your letter.—*Con. 861, 14th Feb. 1834.*

Special case relative to certain lands within the tributary estate of Neelghurry.

## CHAPTER V.

### SUMMARY SUITS—MISCELLANEOUS CASES—REGISTRATION.

#### SECTION I.

##### *Summary Suits in Cases of Distraint—Power to Distrain.*

What persons may  
distrain, whose and  
what property is ba-  
ble to distraint and  
sale.

1. Zemindars, independant talookdars, and other actual proprietors of land, and farmers of land who hold their farms immediately of Government, are empowered to distrain without sending notice to any Court of justice or any public officer (excepting the after notice directed to be given in the cases of defaulters employed in the provision of the Company's investment, or the manufacture of salt as specified in Section 31,) the crops and products of the earth of every description, the grain, cattle, and all other personal property whether found in the house or on the premises of the defaulter, or in the house or on the premises of any other person within or without the limits of the estate or farm of the distrainer, belonging to their under-renters and ryots, and the talookdars paying revenue through them, for arrears of rent or revenue, and to cause the said property to be sold for the discharge of such arrears. The same powers are likewise vested in dependant talookdars for the recovery of arrears of rent from their under-farmers and ryots, and also in under-farmers who farm lands from zemindars, independant talookdars, or other actual proprietors of land, or dependant talookdars, or farmers of land who hold their farms immediately of Government, to enable such under-farmers to enforce payment of arrears of rent or revenue from their ryots, under-farmers or dependant talookdars. The several descriptions of landholders and farmers of land above specified, are to exercise the powers hereby vested in them under the following rules and restrictions.—*Reg. 17, 1793, Sect. 2.—Benares Reg. 15, 1795, Sect. 2.—Ced. and Conq. Prov. Reg. 28, 1803, Sect. 2, Cl. 1.*

The process of distraint may be employed for arrears of a former year provided the defaulter continues to be an under-tenant of the distrainer.

2 The process of distraint was primarily intended to enable landholders and farmers to realize their rents for the current year with punctuality, but Regulation 2, 1805, does not restrict the process from being employed for arrears of a former year, provided the person upon whom the distress is levied continue to be an under-tenant of the distrainer.—*Con. 27, 1st Feb 1807.*

The process of distraint will apply to all claims for arrears of rent whether due on lands paying revenue to govt. or exempt from the payment of revenue.

3. The acting Judge of Behar was informed, on the 21st January, 1808, that the Court were of opinion, that the rules contained in Regulation 7, 1799, as well as of Regulation 17, 1793, and 35, 1795, relating to the power of landholders to proceed against their tenants for arrears of rent, being general, must be understood to apply to all claims for arrears of rent, whether due from lands paying revenue to Government, or from lands held exempt from public revenue.—*Con. 33, 21st Jan. 1808.*

4. The rules of distraint being general, apply to the rent of lands exempt from the public assessment as well as to the rent of lands subject thereto.—*Com. 837, 23d Feb. 1821.*

*Idem.*

5. The zemindars, talookdars, and other landholders and farmers of land, empowered by Section 2 of Regulation 17, 1793, to distrain the crops, cattle, and other personal property of their under-tenants for arrears of rent, are authorized to delegate to their naibs, gomashdars, and other agents, employed in the collection of their rents, the power of distraining in their behalf in the mode prescribed by the Regulations, under the responsibility declared in Section 32 of Regulation 17, 1793, and the naibs, gomashdars, and other agents, to whom such power may be delegated by their principals, are authorized to proceed for the recovery of arrears of rent due to their constituents in the same manner as the latter are authorized to proceed, subject to their own responsibility in addition to that of their principals, for any wilful deviation from the Regulations : but it is hereby declared that neither the landholders and farmers themselves or their agents, are to be made liable to the penalties prescribed for a deviation from any part of Regulation 17, 1793, or of Regulation 35, 1795, or of any other Regulation relative to the distraining for land-rents, unless such deviation shall clearly appear to have been wilful and intentional, or to have proceeded from gross neglect and inattention to the rules prescribed for their guidance. Where no such wilful deviation or gross neglect shall appear, satisfaction to the party aggrieved for the actual damage sustained by him, from the prescribed process not having been strictly adhered to, shall alone be adjudged against the distrainer ; nor shall any judgment be given for such damages if the distrainer can shew that he tendered sufficient amends to the party injured as soon as the irregularity in his proceedings was discovered, or at any time before the action for damages was brought against him, and that such tender was refused.—*Reg. 7, 1799, Sect. 2*

Landholders and farmers, empowered by sec. 2 of reg. 17, 1793, to distrain for arrears of rent, authorized to delegate this power to their agents.

Agents to whom such power may be delegated, authorized to levy distress for arrears of rent due to their constituents

Subject to their own responsibility in addition to that of their principals

Neither landholders, farmers or their agents liable to prescribed penalties except in cases of wilful deviation from, or gross neglect of the regular process for distraining

Where no wilful deviation or gross neglect may appear, satisfaction for actual damage only to be adjudged.

And not thus, if distrainer can shew that he tendered sufficient amends.

6. Such part of Section 5, Regulation 17, 1793, as enacts that "under-farmers, ryots, and dependant talookdars, shall not be considered to have defaulted until the arrears have been ineffectually demanded from them, and also from their surety if they shall have given security and the surety shall be forthcoming," is hereby rescinded ; and under-tenants of every description are to be considered defaulters, for any arrears of rent withheld beyond the day on which the same may have become payable according to their kistbundies, or other engagements, or where there may be no written specification of the exact term of payment beyond the period when the rent demandable from them may be payable according to established local usage. For all such arrears which may not be paid on demand, defaulters are declared liable to immediate distress whether the amount shall have been demanded from their sureties or otherwise. In instances wherein the distrainer may proceed to levy distress from an under-tenant, who has given security, without having previously demanded the arrear from the surety, it will be incumbent on the tenant to give notice of the distress to his own surety so as to enable him to discharge the arrear before the sale of the property attached ; or the distrainer, if he think proper, may give notice to the surety and require him to make payment of the arrear. The distrainer may also, at his option, distrain in the prescribed

Part of sec. 5, reg. 17, 1793, rescinded

Under-tenants to be considered defaulters for any arrears of rent withheld beyond the day on which they became payable.

For such arrears not paid on demand, defaulters liable to distress

Tenant to give notice of distress to his surety

On distrainer may give notice to the surety and require payment from him.



Distrainer may also at his option distrain property of surety.

Or the property of both the defaulter & his surety, so that the distress be not excessive.

Provided the arrear be first demanded from the defaulter, if forthcoming

mode either the property of the defaulter or his surety, or the property of both, so that the whole distress be not excessive in proportion to the arrear; but no distress shall be levied on the property of the surety until the arrear shall have been ineffectually demanded from the defaulter; unless the latter shall have absconded or be otherwise not forthcoming; in which case, and in the event of the surety's not discharging the amount due on demand, distress may be levied from his property for the recovery of it, in like manner as if the defaulter had been present and served with the demand in the first instance.—*Reg. 7, 1799, Sect. 3.*

Heirs and successors of landholders & farmers to distrain for arrears then due to the deceased, if entitled thereto

7. Upon the death of any person vested with the power of distrain by this Regulation, his heirs or successors who may be entitled to the arrears due to him, shall be at liberty to distrain the property of the defaulters, and their sureties in the cases authorized, for the recovery of the same, agreeably to this Regulation. It is to be understood likewise, that managers of the estates of disqualified landholders, and managers of undivided estates belonging to two or more proprietors, all of whom do not come within the description of disqualified landholders, are authorized to exercise the same powers for the recovery of arrears of rent or revenue, as the proprietors of the estates committed to their charge would be entitled to exercise under this Regulation, were they to be entrusted with the management of their own estates, subject however to the several rules, restrictions, and penalties therein specified —*Reg. 17, 1793, Sect. 30.—Benares Reg. 45, 1795, Sect. 28.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 28.*

Managers of estates of disqualified landholders, and managers of undivided estates vested with the power of distrain

Rules in preceding sections applicable to managers of estates of disqualified landholders, and of joint undivided estates, as well as to the officers of govt. holding lands in attachment, or under a khaus collection

8. The rules in the whole of the preceding sections for the recovery of arrears of rent due to proprietors and farmers of land, are to be considered equally applicable to the managers of the estates of disqualified landholders, and of joint undivided estates, as well as to Collectors or other public officers holding lands in attachment for the purpose of adjusting the public assessment on them, or for any other purpose; or making a khaus collection on the part of Government, where no settlement has been made with any proprietor or farmer: and the authorized agents of such managers, Collectors or other public officers, provided they be so commissioned and instructed, are to exercise the same authority as is vested in the agents of proprietors and farmers of land by Section 2 of this Regulation.—*Reg. 7, 1799, Sect. 1<sup>a</sup>*

Persons who under the names of sureties farm or tenant lands in the name of others, to be considered the actual ryots or farmers of such lands.

9. Persons who tenant or under-farm lands in the name of their children, dependants, or others, or in the names of fictitious persons, and give themselves as the ostensible sureties for the performance of the agreement, but retain the actual management of the lands, and in fact are themselves the under-farmers or ryots of such lands, shall to all intents and purposes, be considered as the under-farmers or ryots of such lands, and their property shall be liable to be distrained and sold for arrears under this Regulation, in the same manner as if the engagement for the lands had stood in their own names.—*Reg. 17, 1793 Sect. 27.—Benares Reg. 45, 1795, Sect. 25.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 25*

## SECTION II.

*Summary Suits in Cases of Distraint—Abuse of the Power of Distraint.*

10. If any gomastah, agent, servant, or officer of any person vested with the power of distraint, shall attach or cause to be sold the property of any under-farmer, ryot, or dependant talookdar, or their sureties, or do any act in the attachment or sale of it contrary to this Regulation, the party aggrieved shall have his remedy against the principal of the offender for such illegal attachment, sale or act, whether the same took place or was done by the orders or with the knowledge of such principal or not. Provided that nothing contained in this section shall extend to subject a distrainer to imprisonment in the event of any person deputed by him to attach property, entering the zenana or apartments of women, or breaking open a dwelling-house in opposition to the prohibition contained in Section 21, unless it shall be proved that such acts were done by the order or with the consent or knowledge of such distrainer.—*Reg. 17, 1793, Sect. 32.*

Principals responsible for the acts of their agents.

11. Landholders and farmers of land are prohibited confining or inflicting corporal punishment on any under farmer, ryot, or dependant talookdar, or their sureties, to enforce payment of arrears of rent or revenue. If any landholder or farmer shall offend against this prohibition the person so punished or confined, shall be at liberty either to prosecute the offender for assault or imprisonment in the Criminal court, or to institute a suit against him in the Dewanny adawlut of the zillah, which court shall award damages against such offender, according to the circumstances of the case, with costs of suit.—*Reg. 17, 1793, Sect. 28.—Benares Reg. 45, 1795, Sect. 26—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 26.*

Landholders and farmers prohibited confining or inflicting corporal punishment on defaulters or their sureties.

12. The distress levied shall not be excessive, or in other words, the property seized shall be as nearly as possible proportioned to the amount of the arrear. If any person vested with the power of distraint shall attach any property the value of which shall be disproportionate to the arrear, and it shall be proved that he could have seized other property of less value and which would have been sufficient for the liquidation of such arrear, the Court of Dewanny adawlut shall award to the owner damages according to the circumstances of the case, with all costs of suit.—*Reg. 17, 1793, Sect. 16.—Benares Reg. 45, 1795, Sect. 14—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 14.*

Distress to be proportionate to the arrear.  
Penalty for excessive distress.

13. If any person vested with the power of distraint shall attach, or cause to be sold the property of any under-farmer, ryot or dependant talookdar for arrears of rent or revenue, and it shall appear upon trial that no arrear was due, the distrainer shall be compelled to restore the property to the owner, or to make good to him the value of it, if it shall have been sold, damaged, injured or destroyed, or shall not be forthcoming, and to pay to him as damages a sum adequate to the value of such property and all costs of suit.—*Reg. 17, 1793, Sect. 6.—Benares Reg. 45, 1795, Sect. 6.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 6.*

Penalty for attaching property if no arrear be due.

## SECTION III.

*Summary Suits in Cases of Distraint—Notice of Distraint and Attachment of Property*

Distrainers to furnish the person they may depute to distraint, with a writing, specifying the amount of the arrear, and the date on which it became due

Copy of the writing, with list of property distrained, name of the place, where it is lodged, and notice that it will be sold, endorsed thereon, to be delivered to the defaulter, or left at his place of residence, in case of his absence

Penalty

14. Distrainers shall deliver to the person whom they may depute to attach the property of a defaulter, a writing under their seal and signature specifying the amount of the arrear for which the attachment may be issued, and the date on which such arrear became due. The person so deputed shall produce this writing as his authority for making the attachment, and on the day on which he may attach the property, shall deliver a copy of it to the stated defaulter, endorsing thereon a list or inventory of the property attached, and the name of the place where it may be lodged or kept, with a notice that it will be sold on the fifteenth day commencing from the day following the day on which the attachment took place: or, if the property attached shall consist of crops or other ungathered products of the earth, within fifteen days calculating from the day following the day on which such crops or products may be stored as directed in Section 13, unless the arrear and expenses of the attachment shall be previously discharged, or he shall contest the demand, and procure the attachment to be withdrawn in the manner hereafter specified. If the defaulter shall be absent, a copy of the above writing with the prescribed endorsement shall be fixed up or left at his usual place of residence before the expiration of the third day calculating from the day of the attachment. If any person vested with the power of distraint shall cause any property to be attached without furnishing the Agent whom they may employ for that purpose with the writing above directed, or if such Agent shall be furnished with the writing prescribed, and shall omit to deliver a copy of it with the required endorsement to the defaulter, or, in the event of his absence, to leave such copy at his usual place of residence within the period limited, the distrainer shall not be entitled to recover the arrear for which the distress may have been levied, and he shall be compelled to restore the property to the defaulter, or the value of it, if it shall have been sold, damaged, injured, or destroyed, or shall not be forthcoming, and to pay all costs of suit.—*Reg. 17, 1793, Sect. 8.—Ben res Reg. 45, 1795, Sect. 8.—Ced. and Comp. Proc. Reg. 28, 1803, Sect. 8.*

Secs. 9 and 10 of reg 17, 1793, and part of sec. 8, re-enacted

15. Sections 9 and 10, Regulation 17, 1793, by which distrainers are required to withdraw the attachment on distrained property, on the person from whom the arrear is demanded, denying the justness of the demand, and giving security to have it tried in the Dewanny adawlut within a certain time, and to pay interest to the date of the decree, with costs, in the event of the demand being decreed to be just, *are hereby rescinded* together with the following clause of Section 8 of that Regulation, viz. "*or he shall contest the demand, and procure the attachment to be withdrawn in the manner hereafter specified.*"—*Reg. 35, 1795, Sect. 2.*

Notice of fifteen days directed in sec. 8, reg. 17, 1793, and period of fifteen days fixed by sec. 5 of reg.

16. The notice of fifteen days for the sale of attached property directed in Section 8 of Regulation 17, 1793, and the period of fifteen days from the time of attachment fixed for the sale of such property by Section 5 of Regulation 35, 1795, are

hereby rescinded; and the notice to the defaulter, directed to accompany the inventory of the attached property to be delivered to him, shall inform him only of the arrear due and the intention of the distrainer to bring the attached property to immediate public sale for the discharge of it, unless the amount and expenses of attachment be previously paid. If the defaulter on receiving this notice shall neglect to pay the amount due from him, or to give such assurance of early payment as may be satisfactory to the distrainer, or if the defaulter shall have absconded or be otherwise absent, so that the notice cannot be served on him, the distrainer is to transmit an inventory of such part of the attached property as can be brought to immediate sale, to the nearest *cazee* or other public officer empowered to sell distrained property, with a written request that he will cause the same to be publicly sold for the discharge of the arrear due, the amount of which is also to be specified in the application, together with the place where the property may be in attachment; and if it be the intention of the distrainer to remove it, under the discretion vested in him by Section 12 of Regulation 17. 1793, the place to which such removal is intended. The *cazee* or other authorized officer, on the receipt of such application is to proceed as directed in Section 5 of Regulation 35, 1795, under the following further provisions, viz. instead of fixing the day of the sale on the fifteenth day after the attachment, he shall fix as early a day for the sale as may be compatible with a due observance of the other directions in the above section for the appraisement of the property, and the publication of the intended sale of it, which is to be made by beat of drum on one market day at the least before the market day on which the sale may take place, as well as on the morning of the day of sale, and the sale is in no instance to take place before the expiration of five complete days after the attachment, exclusive of the day on which the attachment may have been made. The same principle is to be observed with respect to the sale of ungathered products after the distrainer shall have gathered and stored them, as required by Section 13 of Regulation 17. 1793, and which are not to be sold until publication shall have been made as above directed. In consequence of this alteration, which is made with a view to expedite the sale of distrained property, distrainers, when they attach the property of persons employed in the provision of the Company's investment, or in the manufacture of salt, are to give the notice directed in Section 31 of Regulation 17. 1793, as soon as possible after making the attachment; and in such cases the property is not to be sold until sufficient time has been given to enable the Company's officers to satisfy the demand before the day of sale. The notice required by the above section however may, at the option of the distrainer, be either given to the Commercial Resident, or Salt Agent, in whose division the defaulter may have been employed, or to the Native Superintendent of the factory or salt chowkey to which the defaulter may be attached.—Reg. 7, 1799, Sect. 4.

35, 1795, for sale of attached property rescinded. Future notice to be given to defaulters.

Inventory and particulars to be transmitted by distrainer to *cazee* or other officers empowered to sell distrained property

*Cazee* or other officer how to proceed on receiving applications for the sale of distrained property

No sale to take place before expiration of five complete days after the attachment

Or after storing products ungathered at the time of attachment.

Notice to commercial residents and salt agents, directed in sec 31, reg. 17, 1793, to be given as soon as possible after attaching the property of persons employed in the Company's investment or manufacture of salt.

And sufficient time to be allowed for satisfying the demand in such cases

But the required notice may be given either to the commercial resident or salt agent, or to the native superintendent of the factory or salt chowkey.

17. Whenever any zemindar, independant talookdar, or other actual proprietor of land, or any person farming land directly from Government, shall be desirous of distraining the property of his tenant, with a view to the recovery of an arrear of rent: such zemindar or other person shall either previously or at the time of the distress, serve the

No process for distress or sale to be legal, unless the tenant shall be served with a written demand accompanied with a *jamina wassil bankeer*.

said tenant with a written demand for the amount of it, accompanied with a jumma wassil baukeo, exhibiting the grounds on which the demand is so made; and no process for the distress and sale of property on account of arrears of rent shall be deemed legal and valid, unless, the rule here prescribed shall have been duly observed. In all practicable cases the prescribed demand and jumma wassil baukeo account, shall be served personally on the tenant; but if he abscond or conceal himself, so that they cannot be served personally upon him, they shall be affixed at his usual place of residence; which latter process shall in such case be deemed and taken to be a sufficient service of the demand and account in question.—*Reg. 5, 1812, Sect. 13.*

Where this notice shall be served if a tenant, on whom this notice is to be served, have no residence in the zillah in which the land is situated

18. It is hereby enacted, in modification of the provisions of Sections 9, 10, 11 and 13 of Regulation 5, 1812 of the Bengal code, that if any ryot or tenant of land, upon whom such notice or demand as is specified in the said sections, is to be served shall have no place of usual residence in the zillah where the land to which such notice or demand has reference is situate, the mode of serving such notice or demand with a jumma wassil baukeo shall be by affixing it at the maal cutcherry of such land, or other conspicuous place thereon, or at the village chource, choupal, or other conspicuous place in the village.—*Act VIII. 1848.*

Attachment not to take place if the defaulter shall tender the arrears upon demand

19. If the defaulter shall tender the arrears demanded of him in the presence of two creditable witnesses to the person deputed to attach his property, such person shall receive the arrears, and shall not proceed to the attachment.—*Reg. 17, 1793, Sect. 7.—Benares Reg. 45, 1795, Sect. 7.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 7.*

Distress to be levied between sunrise & sunset

20. All attachments shall be made after sunrise and before sunset. If any person vested with the power of distraint shall seize or attempt to seize the property of any defaulter after sunset and before sunrise for the discharge of arrears of rent, or revenue, such distrainer shall not be entitled to recover the arrear; and, if the property shall have been attached, shall be compelled to restore it to the defaulter, or the value of it, if it shall have been sold, damaged, injured or destroyed or shall not be forthcoming, with all costs of suit.—*Reg. 17, 1793, Sect. 17.—Benares Reg. 45, 1795, Sect. 15.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 15.*

Penalty for attaching property after sunset and before sunrise.

Transfer of a defaulter's property to prevent distraint, invalid.

Penalty for persons to whom such transfers may be made.

21. If any under-farmer, ryot, or dependant talookdar, shall make a fraudulent conveyance or transfer of his property to prevent the attachment of it for arrears, the Court of Dewanny adawlut, upon proof thereof being made before it, shall cause the property to be delivered up to the distrainer, and compel the person to whom such transfer or conveyance shall have been made, to pay to the distrainer damages adequate to the value of one-half of the property, with costs of suit.—*Reg. 17, 1793, Sect. 18.—Benares Reg. 45, 1795, Sect. 16.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 16.*

Punishment for under-farmers, &c. resisting an attachment or forcibly or clandestinely taking away their property after it has been attached.

22. If any under-farmer, ryot, or dependant talookdar, shall resist the attachment of his property, or shall forcibly or clandestinely take it away after it shall have been attached, the Court of Dewanny adawlut shall cause him and all persons who may be proved to have been his aiders or abettors, to be imprisoned in the jail until he shall restore the

property to the distrainer, or the arrear shall have been liquidated by the distraint and sale of other property, or otherwise discharged with the expences attending the attachment, and costs of suit.—*Reg. 17, 1793, Sect. 19.*—*Benares Reg. 45, 1795, Sect. 17.*—*Ced. and Cong. Prov. Reg. 28, 1803, Sect. 17, Cl. 1.*

23. Suits brought under Regulation 17, 1793. 45, 1795 ; 7, 1799 ; 5, 1800, and 28, 1803, should be considered as summary ; but the defendant should be heard in his defence, and any evidence offered by him to refute the charge of resistance to attachment should be taken.—*Com. 23, 9th Aug. 1806.*

Suits under the within named enactments to be considered summary, but the defendant should be heard in his defence, & his evidence taken.

24. On the second point the Court hold, that the summary proceeding under Section 17, Regulation 28, 1803, [corresponding with Regulation 17, 1793, Section 19,] which clearly involves the adjudication of a penalty by the Civil court for having withdrawn attached property, is limited in point of time, under Section 6, Regulation 2, 1805, to one year from the occurrence of the act which gives rise to the proceeding, unless Government being the party suing, (which it virtually is, in the person of the Collector,) there be good cause shewn for delay beyond that period.—*Con. 316. 2d June 1820.*

The summary proceeding under sec. 19 is limited to one year from the occurrence of the illegal act

Exception.

25. In addition to the penalties provided by Section 19, Regulation 17, 1793, it is hereby declared, that if any under-tenant, of whatever description, shall resist or cause to be resisted the attachment of his property for arrears of rent in the mode prescribed by the Regulations so as to prevent the attachment from taking place, or shall forcibly or clandestinely take away such property after it shall have been attached; such offender shall on proof before the Dewanny adawlut, be made liable to damages to the distrainer equal to twice the amount of the property rescued from attachment, and the property so taken away may be re-attached by the distrainer wheresoever it may be found. The offender and all persons concerned with him in resisting the attachment are moreover declared liable to be apprehended and prosecuted before the Criminal courts for any breach of the peace committed by them in such resistance to the attachment, and the Police officers, on information of such, are immediately to repair to the spot, and take all proper measures under the Regulations as well to apprehend and send to the Magistrate any persons who may appear to have broken the peace, as to support distrainers in the due exercise of the legal powers vested in them.—*Reg. 7, 1799, Sect. 9*

Further penalties for resistance to attachments for arrears of rent as prescribed by the regulations

Offenders liable to damages equal to twice the amount of the property rescued from attachment

And property taken away may be re-attached wheresoever found

Offender and all persons concerned with him also liable to be apprehended and prosecuted for any breach of the peace

Police officers how to act on information given in such cases

26. If any person, not being the owner, shall be convicted of forcibly or clandestinely taking away property that has been distrained, the Court of Dewanny adawlut, upon proof thereof being made before it, shall cause such person or persons to be imprisoned until they restore the property, or make good the value of it to the distrainer, and pay to him as damages, a sum equal to the value of such property, and all costs of suit.—*Reg. 17, 1793 Sect. 20*—*Benares Reg. 45, 1795, Sect. 18.*—*Ced. and Cong. Prov. Reg. 28, 1803, Sect. 18.*

Punishment for persons not being the owners, forcibly or clandestinely taking away property which has been attached

## SECTION IV.

*Summary Suits in Cases of Distraint—Search of Houses.*

What places distrainers may force open to attach the property of defaulters.

Zenana or women's apartments not to be entered, whether the doors be open or shut.  
Dwelling-houses not to be forced open.

Punishment for entering women's apartments or forcing open dwelling houses.

Penalty for entering any dwelling-house, or breaking open any place not occupied by or in the possession of the defaulter, shed on property belonging to him he forced therein.

Modification of restrictions in sec. 21 of reg. 17, 1793.

Distrainer, in presence of a police officer, may force open the outer door of a dwelling-house in which he has reason to suppose the defaulter's property to be lodged.

And with certain precautions may enter the zenana apart-

27. Distrainers are empowered to force open any stable, cow-house, barn, golah, granary, or other building, and to enter any dwelling-house, the outer door of which may be open (excepting the apartments in such dwelling-house which may be appropriated for the zenana or residence of women,) and to break open the door of any room in such dwelling-house, for the purpose of attaching any property belonging to a defaulter which may be lodged therein. But nothing contained in this Regulation shall be construed to authorize persons vested with the power of distraint, or their servants, or agents, to enter the zenana or apartments of women, whether the doors or passages leading thereto be open or not, nor to force open and enter any dwelling-house the outer door of which may be locked or barred. Persons entering the apartments of women, or forcing open the outer door of any dwelling-house, shall be imprisoned for six months, the distrainer shall not recover the arrears for which the attachment may have been issued, and he shall be compelled to restore to the defaulter, any property that may have been attached, or the value of it, if it shall have been sold, damaged, injured, or destroyed, or shall not be forthcoming, and the court shall further award against such distrainer heavy damages, with all costs of suit. And if any persons shall enter a dwelling-house, or break open any stable, cow-house, barn, golah, granary, or other building not occupied by or in the possession of the defaulter, to distraint property belonging to him, and no such property shall be found therein, the distrainer shall be liable to prosecution by the occupant or possessor for entering such house or breaking open such stable or other building, and the court shall award to him damages according to the circumstances of the case, with all costs of suit.—*Reg. 17, 1793, Sect. 21.*—*Beautrais Reg. 15, 1795, Sect. 19*—*Cod. and Cong. Prov. Reg. 28, 1804, Sect. 19, Cl. 1.*

28. The restrictions contained in Section 21 of Regulation 17, 1793, which prohibit distrainers from forcing open the outer door of any dwelling-house, and from entering the zenana or apartments of women, having been found liable to abuse, such restrictions are hereby modified as follows. When a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling-house, the outer door of which may be shut, or within any apartments appropriated to women, which by the usage of the country are considered private, he is at liberty to represent the same to the Police darogah within whose jurisdiction the house may be situated, and on such representation the Police darogah is to send a Police officer to the spot, in the presence of whom the distrainer is authorized to force open the outer door of the dwelling-house in which he may have reason to suppose the defaulter's property to have been lodged, in like manner as he is already authorized to break open the door of any room within a dwelling-house except the zenana. He may also, in the presence of the Police officer, after due notice given for the removal of any women within the zenana, and after furnishing means

for their removal in a suitable manner, if they be women of rank, who according to the customs of the country cannot appear in public, enter the zenana apartments for the purpose of attaching any of the defaulter's property deposited therein. But such property, if found, shall be immediately removed from such apartments, after which they are to be left free to the former occupants; and nothing in this Regulation is to be understood to authorize any distrainer or his agent to force open the door of a dwelling-house, or to enter the apartments of women which by the usage of the country are considered private, in any other mode than is herein prescribed, a wilful deviation from which will subject the offender to heavy damages, besides forfeiture of the arrear of rent on account of which the distress may be levied—*Reg. 7, 1799, Sect. 10.*

ments to attach property

But such property to be immediately removed, and the apartments left free to occupants

Penalty for forcing open the door of a dwelling-house or entering the apartments of women considered private in any other mode than is herein prescribed

29. In all cases wherein persons authorized to distrain property for arrears of rent may apply to the Police darogah of the jurisdiction to depute a Police officer to be present at the time of making the attachment, with a view to prevent resistance or other breach of the peace, the Police darogah shall, as far as may be in his power, immediately comply with such applications; and the Police officers so deputed shall use every means in their power to prevent resistance or other breach of the peace in such cases. He shall also give due attention to the whole conduct and proceedings of the distrainer, so as to be able to give evidence thereupon if afterwards required, either before the Judge or Magistrate.—*Ibid, Sect. 11.*

Police darogah on application to depute an officer to be present at attachments for arrears of rent

Officer so deputed to use every means to prevent resistance or other breach of the peace, and to observe the conduct of distrainers.

## SECTION V

### *Summary Suits of Persons, not being Defaulters, claiming Property that has been distrained*

30. If any person, not being the defaulter or responsible for him, claim as his right the property distrained, and the distrainer shall notwithstanding cause the same to be sold, the claimant on proof of his right in the Dewanny adawlut and in the event of the distrainer being unable to prove that he was responsible for the arrear on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with all costs and damages, according to the circumstances of the case. But no claim to crops upon the ground or to any gathered product of the ground attached in the possession of the defaulter, whether founded upon a previous sale, mortgage, or otherwise, shall bar the price claim of rent due for the ground upon which such crop or product may have been grown, it being the undoubted right of the owner of the land, or his representative, to consider the produce of it mortgaged to him for the rent of the land in the first instance, and in default of his rent being paid as engaged for (or determinable by local rates and usage where there may be no specific engagement) to distrain and sell such part of the product as may be necessary to make good the arrear due to him—*Reg. 7, 1799, Sect. 9.*

Claims to property distrained and sold, to be preferred in the dewanny adawlut

In what cases judgment for value of such property with costs and damages to be given against the distrainer

But no claim to ground products attached in possession of defaulter to bar the price claim of ground rent.

31. It is hereby enacted, in modification of Section 9 Regulation 7 of 1799, Section 9, Regulation 5 of 1800 and Clause 2, Section 17, Regulation 28 of 1803, all

The above sec. is modified. The distrainer shall withdraw



the attachment if the person not the defaulter claim the property distrained, and within five days after the attachment, enter into a bond and give security to institute a summary suit against the distrainer and defaulter

of the Bengal code, that if any person not being such a defaulter as is therein mentioned or responsible for him, shall claim as his right property which has been distrained for arrears of rent due from the said defaulter, and shall within five days, reckoning from the day after attachment, enter into a bond before the Collector of the zillah or the Commissioner appointed under Act I. of 1839, with good security binding himself to institute before the Collector within fifteen days from the date of such bond, a summary suit against the distrainer and defaulter for the trial of the right, and to restore the property or make good its value in case the claim be disallowed with all costs of suit and damages, the distrainer shall immediately withdraw the attachment.—*Act X. 1846, Sect. 1.*

Consent to be pursued if the claimant shall not within 15 days institute such summary suit

32. Provided always and it is hereby enacted, that if the claimant shall not within the said fifteen days institute such summary suit, it shall be lawful for the distrainer to recover the value of the property distrained together with the expenses of the attachment by attachment and sale of the personal property of the claimant, or his surety, or both, unless the claimant shall restore the property, or, if the distrainer prefer it, make good its value.—*Ibid Sect 2*

No suit to set aside the summary award of the collector shall be brought one year after the date of the award

33 And it is hereby enacted, that no suit to set aside the summary award of the Collector under this Act, shall be brought after the expiration of one year from the date of such award.—*Ibid, Sect 3*

## SECTION VI

### *Summary Suits in Cases of Distrain—Property which may, and may not be distrained—Restrictions on Distrainers.*

What property is not liable to distraint and sale

34 Persons vested with the power of distraint shall not distrain or sell the lands, houses, or other real property of their under-farmers and ryots, or the talookdars paying revenue through them, nor goods or advances belonging to the Company in the hands of any weaver, manufacturer, or other persons employed in the provision of their investment, nor the loom, thread, unwrought silk, or materials of manufacture of any weaver or manufacturer, nor the tools of any tradesman or labourer standing towards them in the relation of under-farmer, ryot, or dependant talookdar. All such distraints and sales are declared illegal and void. The defaulter shall stand acquitted of the arrear for which the distress may be levied, and the property shall be restored to him, or the distrainer shall be compelled to make good to him the value of it, if it shall be personal property, and shall have been destroyed, damaged, or injured or shall not be forthcoming, and the distrainer shall be further obliged to pay to him damages adequate to the loss which he may prove to have sustained in consequence of such attachment or sale, with all costs of suit.—*Reg. 17, 1793, Sect. 3.—Benares Reg. 45, 1795, Sect. 3—Ced. and Conq. Prov Reg. 28, 1803, Sect. 3*

Distrain and sale of it illegal and void  
Penalty

What property is not to be distrained, or other sufficient pro-

35. The ploughs and implements of husbandry, the cattle, actually trained to the plough, and the seed grain of under-farmers, ryots and dependant talookdars shall not

be distrained for arrears, provided the defaulter shall possess, and the distrainer shall have it in his power to attach, other cattle, grain, or property sufficient for the discharge of the arrear. Distrainers are enjoined to attend strictly to this rule, and every deviation from it shall be punished by an award to the party aggrieved of damages adequate to the injury he may have sustained, with all costs of suit.—*Reg. 17, 1793, Sect. 4.—Benares Reg. 45, 1795, Sect. 4.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 4.*

party can be attached.

Penalty.

36. The opinion of the Sudder Board of Revenue having been sought in respect to the

Distrainers cannot distrain and sell the houses, trees & other real property of their tenants for rent.

1st. Can landholders and other persons vested with the power of distrain, distrain and sell the houses, trees, and other real property of their tenants on account of rent?

2d. In the execution of a summary decree for rent are houses and trees, or other real property not included in the pite or other tenure from which the arrear is due liable to sale?

questions noted on the margin, I am directed, as they are given to understand that a great diversity of practice prevails upon the subject, to communicate to you that the board consider distrainers incompetent to distrain and sell the houses,

trees, and other real property of their tenants on account of rent.—and they also view as illegal the sale, in execution of a summary decree for rent, of houses, and trees, or other real property situated on any other land than the tenure on which the default has occurred, and on account of rent of which decree has passed.—*Cir. Ord. S. B. R. 20th March 1846.*

37. Ploughs and other implements of husbandry, bullocks, and other cattle employed in agriculture, together with the tools of artisans, shall not be subject to distress and sale on account of arrears of rent, although the tenant, from whom such arrears may be demanded, shall not possess other property sufficient to make good the arrear.—*Reg. 5, 1812, Sect. 14.*

Ploughs, &c. and cattle employed in agriculture, not to be distrained or sold.

38. Distrainers who shall attach the crops or any ungathered products of the earth belonging to their under farmers, ryots, or the talookdars paying revenue through them, shall cause such crops or products to be reaped or gathered in due season, and store the same in proper houses, barns, or granaries upon the premises, or if there shall be no such places on the premises, in any barn or proper place which can be procured as near thereto as possible within the limits of the pargunnah. The expence of reaping or gathering and storing such crops or products shall be paid by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.—*Reg. 17, 1793, Sect. 13. Benares Reg. 45, 1795, Sect. 11.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 11.*

Distrained crops & ungathered products of the earth when to be reaped or gathered, and where to be stored.

39. Distrainers shall not drive or convey distrained cattle or other property out of the limits of the pargunnah in which it may have been attached. The distrainer shall either leave the property upon the premises in the charge of any person he may think proper, or drive or convey it with due care to a proper place as near as possible to the premises within the limits of the pargunnah.—*Reg. 17, 1793, Sect. 12. Benares Reg. 45, 1795, Sect. 10. Ced. and Cong. Prov. Reg. 28, 1803, Sect. 10.*

Property distrained not to be taken out of the pargunnah. Where to be kept.

40. Distrainers shall not work the bullocks or cattle, or make use of the goods or effects distrained. They shall provide the necessary food for the cattle or live stock, the expence attending which shall be paid by the owner upon his redeeming the property, or

Distrained cattle not to be worked, nor goods or effects used. Distrainers to provide food for cattle.

or live stock Ex-  
pence how to be de-  
frayed

from the proceeds of the sale, in the event of its being sold.—*Reg. 17, 1793, Sect. 14.—Benares Reg. 45, 1795, Sect. 12.—Ced. and Conq. Prov. Reg. 28, 1803, Sect. 12.*

Penalty for dis-  
trainers neglecting to  
take due care of the  
property distrained

41. If property distrained shall be stolen, or lost or be damaged, injured or destroyed by the weather or otherwise, whilst in the possession of the distrainer, owing to his not having taken the necessary precautions for the due keeping and preservation of it he shall make good the loss or damage to the owner.—*Reg. 17, 1793, Sect. 15.—Benares Reg. 45, 1795, Sect. 13 —Ced. and Conq. Prov. Reg. 28, 1803, Sect. 13*

## SECTION VII

### *Summary Suits in Cases of Distraint—Persons authorized to sell distrained Property*

Repeals all regula-  
tions giving any per-  
sons authority by vir-  
tue of office to sell  
property for arrears  
of rent

12 It is hereby enacted, that from the first day of May next ensuing, after the passing of this Act, all Regulations and parts of Regulations of the Bengal code, which give to any persons or class of persons authority, by virtue of any office held by them, to sell property distrained for the recovery of arrears of rent, shall so far as they give such authority, be repealed —*Act I. 1839, Sect. 1*

Collector, &c. by  
sumat, may appoint  
persons to sell prop-  
erty, deducting a  
percentage

13. And it is hereby enacted, that from the date aforesaid, it shall be lawful for the Collector or officer duly exercising the powers of a Collector, in each district subject to the Presidency of Fort William in Bengal, to appoint, by a sumat under his signature and seal, in the terms of the schedule appended to this Act, and conformably to such instructions as he may receive in that behalf, any person or persons to exercise the function of selling property distrained for the recovery of arrears of rent in each pargunnah or sub-division of his district, and to authorize such persons to remunerate themselves by deducting a percentage, not in any case exceeding ten per centum on the amount of the proceeds of the sale.—*Ibid. Sect. 2*

Ad. regulations for  
persons appointed to sell,  
to apply to persons  
appointed under this

14 And it is hereby enacted, that all Regulations and parts of Regulations of the Bengal code, which give powers to, or prescribe rules for the guidance of persons appointed to conduct the sale of property distrained for the recovery of arrears of rent which assign any penalty or other punishment for misfeasance in the discharge of such duty, shall be applicable to all parties appointed for the sale of such property under this Act —*Ibid. Sect. 3*

Schedule

45 I, A. B., Collector of ———, zillah ———, (or exercising the powers of a Collector), in virtue of the powers vested in me by Act No. I. of 1839, appoint you C. D., Commissioner for the sale of property distrained for the recovery of arrears of rent, in the manner prescribed by the Regulations of Government. You are to reside at E., in pargunnah F., and are to exercise the authority vested in you by these Regulations, or by any others which may be hereafter transmitted to you for your guidance, in strict conformity thereto; and are to keep a regular and complete record of your proceedings, to be produced when called for by me, or by the Courts of justice. You

are hereby authorized to remunerate yourself for your trouble, by deducting and appropriating per centum on the amount of the proceeds of sale.—*Schedule Act I. 1839.*

### SECTION VIII.

#### *Summary Suits in Cases of Distraint—Duties of the Officer selling Distrained Property and Rules of Sale.*

46. After the expiration of the fifth day and before the lapse of the eighth day, calculating from the day following the day on which the attachment of the property of a defaulter shall have taken place, or if the property attached shall consist of crops, or other ungathered products of the earth, after the lapse of the fifth day, and before the expiration of the eighth day, commencing from the day following the day on which such crops or products may have been stored as directed in Section 13, Regulation 17, 1793, the distrainer shall apply to the *cazee* of the *pungmah* to have the same appraised and sold. Upon the receipt of such application, the *cazee* shall proceed as follows. He shall fix upon the outer door of his own house, and at the place at which he may determine to dispose of the property, a list of the property attached, with a notice, which shall specify, Firstly, the place at which the property is to be sold, which shall be on the spot where it may be lodged by the distrainer, or at the nearest *gunge*, bazar or *haut*, or any place of public resort where the *cazee* may be of opinion it is likely to sell to the best advantage, secondly, the day on which it is to be sold, which shall be the fifteenth day, commencing from the day following the day on which the attachment may take place, unless the property shall consist of crops or other ungathered products of the earth, in which case, the sale shall be made on the fifteenth day calculating from the day following the day on which such crops or products may be stored as directed in Section 13 Regulation 17, 1793, and thirdly, the time of the day when the sale is to be made which shall be during the hours of business when the greatest number of people may be supposed to assemble. The *cazee* shall nominate two creditable persons, competent by their profession, trade, or occupation, to appraise the property. The persons so appointed, shall appraise the property according to the current price which the several articles may then bear in the country, and shall deliver the particulars of the appraisement in writing, and attest the same with their signatures, and shall certify in writing at the foot of the paper, that they have appraised the property according to the best of their knowledge and judgment. The *cazee* shall affix his seal to the paper of appraisement, and cause it to be stuck up on the outer door of his own house, and at the place where the property is to be sold.—*Reg. 35, 1795, Sect. 5.*

Rules regarding the sale of distrained property

Distrainer to apply to the *cazee* of the *pungmah* to sell the property.

Acts to be done by the *cazee* on receipt of the application, viz to publish at the places herein specified, a list of the property  
The place of sale  
The day of sale

And the hour of the day when the sale is to be made.

To appoint appraisers to value the property

To fix up the paper of appraisement at the places herein specified

47. The several descriptions of landholders and farmers of land, specified in Section 2, are empowered under the restrictions contained in this Regulation, to attach and sell the property of persons employed in the provision of the Company's investment, or the manufacture of salt, for the recovery of arrears of rent or revenue, without previously stating the claim to the Company's commercial representative, or to any Salt Agent,

Explanatory rule respecting defaulters employed in the provision of the investment, or the manufacture of salt

or other officer employed in the salt department. But such distrainers shall within three days, calculating from the day following the day of the attachment, after they shall have attached the property of any weaver or molungee, or other person employed in the provision of the Company's investment, or the manufacture of salt, send information of such attachment in writing to the Commercial Resident or Salt Agent, or the nearest commercial factory or salt entcherry, that the Commercial Resident or Salt Agent may satisfy the demand previous to the time fixed for the sale of the property, or cause such steps to be taken in behalf of the defaulter as may be consistent with this Regulation.—*Reg. 17, 1793, Sect. 31.*

Distrained property to be appraised previously to sale, & a certificate furnished to the defaulter

48. Whenever property shall have been distrained with a view to the sale of it, for the recovery of arrears of rent, it shall be appraised previously to such sale, by persons conversant with the purchase and sale of articles of the quality and description of those so distrained, and a certificate of the appraisement shall be furnished by the appraisers under their signatures, which shall be communicated to the tenant at least three days before the sale—*Reg. 5, 1812, Sect. 18.*

Attachment to be withdrawn if the defaulter shall tender the arrear and expences of attachment previous to the day of sale

49. If the defaulter shall tender payment of the arrear demanded of him in the presence of two creditable witnesses after his property shall have been attached, and prior to the day fixed for its being put up to sale, and also of the necessary expences attending the attachment, the distrainer shall receive the amount of such arrear, and expences immediately upon the same being tendered, and shall forthwith release the property. In case of any dispute arising respecting the expences of the attachment, it shall be determined by the cazee of the pargunnah in which the distress may have been levied. The Courts of Dewanny adawlut are upon complaint made to them to punish any distrainer who may act contrary to this Regulation by awarding against him in favour of the party injured, damages according to the circumstances of the case, with all costs of suit.—*Reg. 17, 1793, Sect. 11. —Benares Reg. 45, 1795, Sect. 9.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 9.*

To cause the property or samples of it to be brought and exposed at the place of sale

50. The property shall be brought to the place of sale on the morning of the day of sale, in order that it may be examined by the persons intending to bid, unless it shall consist of grain or other products of the earth, the removal of which would be attended with considerable expence, in which case, samples only, indiscriminately taken from each article, shall be brought to the place of sale, and exposed for the purpose abovementioned.

To put up the property to sale in one, or two or more lots

The property shall be put up to sale, in one lot, or in two or more lots, as the cazee may think advisable. The property shall be disposed of for the highest price that may be offered for it. If the property shall sell for more than the amount of the arrear, the overplus after deducting the charges attending the attachment and sale of it, shall be returned to the defaulter. If the proceeds of the sale shall be insufficient for the discharge of the arrear, and the expences attending the attachment and sale, the distrainer shall be at liberty to attach other property belonging to the defaulter, and to

To dispose of the property to the highest bidder

To return any overplus in the proceeds to the defaulter

To sell further property for any deficiency

And to examine & check the distrainer's statement of expences

cause it to be sold to make good the deficiency. The cazee is in every case to examine the distrainer's statement of the expences consequent to the attachment and sale of the

property, and to reject any part of it that may appear to him unreasonable. If any person vested with the power of distraint, shall sell or dispose of property which he may have attached for arrears of rent or revenue, in any other mode than that prescribed in this section, he shall forfeit the arrear for which the distress may be levied to the defaulter, and make good to him the value of the property sold or disposed of with all costs of suit.—*Reg. 35, 1795; Sect. 5.*

attending the attachment and sale.  
Penalty for distrainers disposing of distrained property in any manner excepting that hereinafter directed

51. If at the time of sale, a price shall not be offered for the distrained property equal to its appraised value, the sale shall be postponed until the ensuing market day, when the property shall be actually sold, whatever price (not less than the amount bid on the first day of sale) may be offered for it.—*Reg. 5, 1812, Sect. 19.*

Sale to be postponed should the price offered be less than the appraised value.

52. As a compensation to the cazees and other public officers empowered to dispose of property under distraint, both for their personal trouble, and for the expence they may incur in publishing and making such sales, as well as in causing the attached property to be appraised as directed by Section 5 of Regulation 35, 1795, they shall draw a commission of one anna in the rupee on the amount sales of the property sold by them; to be deducted from the proceeds, and charged to the account of the defaulter, with the other expences attending the attachment. But no such commission shall be drawn, nor any charge made to the defaulter beyond expences actually and necessarily incurred, in the event of the sale being stopped by his discharge of the arrear due from him, or otherwise. It is expected that this allowance to the officers entrusted with the sale of distrained property will ensure the faithful discharge of the trust reposed in them; and any collusion with the defaulter, distrainer, or purchaser, or other misconduct in the execution of the duty committed to them, will render them liable to immediate dismissal from their offices in the mode provided by the Regulations, besides subjecting them to the other penalties therein specified, and full damages to the party injured.—*Reg. 7, 1799, Sect. 5. [This has been modified by Act I. 1839, Section 1, page 494.]*

Commission to be drawn by officers authorized to sell distrained property, if the sale take place, but not otherwise.

Faithful discharge of trust expected in consequence of such allowance.  
Punishment of collusion or other misconduct

53. The Moonsiff or other competent officer called upon to sell distrained property is entitled to be reimbursed his expences actually and necessarily incurred, though no sale take place, and if such expences be not paid, he is authorized to realize the same by such part of the attached property as may be necessary for the purpose. [*See Act I. of 1839, No. 42—44.*]  
—*Con. 714, Cal. C. 31st Aug, West. C. 5th Oct. 1832.*

The seller of distrained property is entitled to his commission, though no sale take place.

54. The distrainer, the cazee, and the appraisers, are prohibited purchasing, directly or indirectly, any part of the property. Any cazee or appraiser offending against this prohibition, shall be compelled to restore the property to the defaulter, or the full value of it, in the event of its being injured, damaged, destroyed, or not forthcoming, and shall forfeit the purchase money, which shall be appropriated to the liquidation of the arrear, and pay all costs of suit; and the court shall report the circumstances to the Sudder dewanny adawlut, for the information of the Governor General in Council, who, if there shall appear to him sufficient ground for so doing, shall dismiss such cazee from his office. Distrainers acting contrary to the prohibition contained in this section shall be compelled to restore the property to the defaulter, or the full value of it, if it shall have

Distrainer, cazee, and appraisers, not to purchase the property.

been injured, damaged, or destroyed, or shall not be forthcoming, and shall likewise forfeit to him the arrear for which the property may have been attached, and pay all costs of suit.—*Reg. 17, 1793, Sect. 24.—Benares Reg. 45, 1795, Sect. 22.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 22.*

Defaulters not to bid for or purchase their property.

55. Neither the defaulter, nor any person on his behalf, shall be permitted to bid for or purchase the property.—*Reg. 17, 1793, Sect. 25.—Benares Reg. 45, 1795, Sect. 23.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 23.*

New rules regarding the payment of the purchase money for distrained property.

56. The property shall be paid for in ready money at the time of the sale, and the purchaser shall not be permitted to carry away any part of the property which shall not have been paid for. Should the purchaser fail in the payment of the whole or part of the purchase money within five days, calculating from the day following the sale, the whole of the property, or the part of it which may be unpaid for, shall be resold by the *cazee* on such day as he shall fix, for the best price that may be offered for it. The defaulting purchaser shall forfeit to the distrainer, ten per cent. on the amount of the price at which he shall have purchased the property so resold, and make good to him any loss that may arise, as well as the expenses that may be incurred, on the resale. If any profit shall accrue on the resale, it shall be carried to the credit of the defaulter.—*Reg. 35, 1795, Sect. 7.*

Punishment for *cazees* conniving at unfair practices in the appraisement or sale of property.

57. The *cazee* is to be careful to prevent any unfair practices either in the appraisement or sale of property. Upon proof being made before the Court of Dewanny *adawlut* of the *zillah* of his conniving at any such practices, the court shall cause him to make good any loss or injury that the defaulter may have thereby sustained, with costs of suit; and shall immediately report the circumstances of the case to the *Sudder dewanny adawlut* for the information of the Governor General in Council, who, provided there shall appear to him sufficient reason for so doing, shall dismiss such *cazee* from his office.—*Reg. 17, 1793, Sect. 23.—Benares Reg. 45, 1795, Sect. 21.—Ced. and Cong. Prov. Reg. 28, 1803, Sect. 21.*

## SECTION IX.

### *Summary Suits against Distraint—Rules regarding these Suits.*

Attachment to be drawn, and distrained property to be restored, should a tenant who may not have given security, dispute the demand and enter into a bond with security, binding himself to institute a suit within fifteen days.

58. If an attachment for arrears shall have been issued against the property of any tenant of any description, whether denominated under-farmer, *ryot*, or dependant *talookdar*, who may not have given security for the payment of his rent or revenue, and such tenant shall dispute the justness of the demand, and shall within five days, reckoning from the day following the attachment, or if the property attached consist of crops, or other ungathered products of the earth, within five days, calculating from the day following the date on which such crops or products may be stored, enter into a bond before the Judge or Collector of the *zillah*, the *cazee* of the *purgunnah*, the Commissioner, or other person vested with power to sell distrained property, or before the distrainer himself, with good security, binding himself to institute a suit in the Dewanny *adawlut* of the

zillah within fifteen days from the date of such bond, for the trial of the demand, and to pay whatever sum may be adjudged to be due from him, with interest upon it at the rate of twelve per cent. per annum, to be calculated from the date on which the arrear that may be awarded became payable to the date of the decree, with all costs of suit, the distrainer shall immediately withdraw the attachment, and restore the property to the defaulter.—*Reg. 5, 1812, Sect. 15.*

59. If the stated defaulter shall fail to execute the bond within the period prescribed, the distrainer shall be at liberty to keep the property under attachment, and to cause it to be sold in the manner hereafter directed, unless the arrear, with the expences of the attachment, shall be discharged previously to the day of sale. If the defaulter shall execute the bond, but omit to institute the suit in the Dewanny adawlut within the time prescribed, the distrainer shall demand payment of the arrear from the surety; and in the event of his not discharging the amount immediately, the distrainer shall be at liberty to issue an attachment against the personal property both of the surety and the defaulter, or the personal property of either of them excepting always the articles specified in Section 14 of this Regulation, and to cause it to be sold, unless the arrear and the expences of the attachment shall be discharged previously to the day of sale.—*Ibid.*

Attachment shall continue and the property be sold, should the tenant fail to execute such bond or pay the arrears.

Should he execute the bond but fail to institute a suit his security may be proceeded against.

60. If an attachment for arrears shall have been issued against any tenant, who may have given security for the payment of his rent or revenue, and such tenant shall dispute the justness of the demand, and the surety within five days, reckoning from the day following the day of the attachment, or if the property attached shall consist of crops or other ungathered products of the earth, within five days, calculating from the day following the date on which such crops or products may be stored, shall deliver a writing, attested by two witnesses, to the Judge of the Dewanny adawlut, the Collector of the district, the cazeer of the purgunnah, the Commissioner or other person vested with power to sell distrained property, or to the distrainer himself, engaging that either he or the stated defaulter will institute a suit in the Dewanny adawlut within fifteen days from the date of such writing, to try the demand, and to pay the amount that may be adjudged against them, with interest upon it at the rate of twelve per cent. per annum, to be calculated from the date on which the arrear that may be awarded became payable, to the date of the decree, with all costs of suit, the distrainer shall immediately withdraw the attachment.—*Ibid.*, Sect. 16.

Under what rules attachment shall be withdrawn in the case of tenants who have given security disputing the justness of the demand.

61. If the surety shall fail to execute such writing within the prescribed period the distrainer shall continue the property under attachment, and cause it to be sold in the manner hereafter directed, unless the arrear and the expences attending the attachment shall be discharged previously to the day of sale. If the surety shall execute the writing, but fail to have the suit instituted either in his own name, or that of the defaulter, within the abovementioned period of fifteen days, the distrainer shall demand payment of the arrears from the surety, and in the event of his omitting to discharge the amount immediately, the distrainer shall be at liberty to issue an attachment against the

Property to continue under attachment should the surety fail to execute the necessary writing

Should the surety fail to have a suit instituted, the distrainer may attach both his and the defaulter's property.



The rules contained in sec. 16, declared to be applicable, should the required writing not be executed by the surety, and the defaulter himself give the required security.

personal property both of the surety and the defaulter, or the personal property of either of them, excepting always the articles specified in Section 14 of this Regulation, and to cause it to be sold in the manner hereafter directed; unless the arrears and the expence attending the attachment shall be discharged before the day of sale. If the surety of the stated defaulter shall refuse or omit to enter into the writing required, or if he shall happen to be at a distance, so as to render it impossible for him to execute such writing within the prescribed time, and such defaulter in either of these cases shall give the security required from the defaulters specified in Section 15 of this Regulation, the distrainer shall withdraw the attachment: and the rules contained in the foregoing section shall in every respect be considered applicable to the parties concerned.—*Reg. 5, 1812, Sect. 16.*

Failure to institute a suit within the period subjects the property to re-attachment, but does not deprive the tenant of the benefit of a summary suit.

62. I am desired to communicate to you the opinion of the Court, that although the omission on the part of the tenant and his surety to institute a suit, within the period named in the bond, subjects his property to re-attachment and sale, according to the ordinary process, yet it does not deprive him or his surety of the benefit of a summary suit, for the recovery of damages on account of injury sustained by the illicit sale of the property.—*Con. 421, 2d June 1826, par. 2*

The power to receive security under the above enactment no longer belongs to mooniffs.

63. Held on a reference from the Judge of Tirhoot, that as the power to receive security, in cases of distrant for arrears of rent, was conferred on Mooniffs under Section 16, Regulation 5, 1812, in virtue of their office as Commissioners for the sale of distrained property, that power necessarily ceases with the withdrawal of the commission under the operation of Act I. of 1839.—*Con. 1255, Cal C. 18th Oct., West. C. 22d Nov 1839.*

Secs 15 & 16, reg. 5, 1812, modified

64. In modification of the rules contained in Sections 15 and 16, Regulation 5, 1812, which prescribe that the individual whose property is distrained should give security for instituting a suit to contest the demand, it is hereby provided that if a part only, and not the whole of the demand be contested, it shall be competent to the individual whose property is distrained, to release it from distrant, on paying a part of the demand and giving security to contest the remainder.—*Reg. 8, 1831, Sect. 12.*

The whole of the above rules are applicable to telseeldars, sezawuls, and others employed in making khaus collections

65. A reference having been made to the Court of Sudder dewanny adawlut, with a view to ascertain whether the provisions of Sections 15 and 16, Regulation 5, 1812, are applicable to telseeldars, sezawuls, and other revenue officers employed in making khaus collections on the part of Government, and exercising the powers vested in them by Section 36, Regulation 28, 1803; I am directed to communicate for your information the following opinion delivered by the Court on the subject—The Court, on due consideration of the sections above cited, are of opinion, that whenever the public officers referred to in Section 36, Regulation 28, 1803, may be desirous of exercising the authority vested in them by that section, for recovering arrears of rent by a distress and sale of property, under the rules prescribed for empowering landholders and farmers of land to recover arrears of rent from their under-tenants, the whole of the rules in force, including the modifications of former rules enacted in Regulation 5, 1812, must be considered equally applicable to the officers of Government, as to individual landholders, or farmers of lands and their agents.—*Cir. Ord. 28th April 1818.*

Persons unable to give sufficient security may institute a suit

66. Should any ryot, farmer, or dependant talookdar, whose property may have been distrained, be unable to give security to the amount of the demand, together with

interest upon it, at the rate of one rupee per mensem, with costs of suit and expences in the court to try the demand or recover damages. of attachment, he will of course be at liberty to institute a suit against the distrainer in the Dewanny adawlut, to try the demand, and for the recovery of damages on account of any injury which he may have sustained by the illicit sale of his property.—*Reg. 5, 1812, Sect 17.*

67. Suits which may be instituted under the present Regulation, shall be decided on a summary enquiry, under the provisions contained in Regulation 7, 1799.—*Ibid, Sect. 20.* Suits under this regulation to be decided on summary enquiry under reg. 7, 1799.

69. I am directed to inform you, that in pursuance of Section 20, Regulation 5, 1812, (which expressly directs, that suits instituted under that Regulation shall be decided on a summary enquiry,) all suits instituted in the Zillah or City court under the sections above noticed, (Sections 15, 16 and 17, Regulation 5, 1812,) should in the judgment of the Court of Sudder dewanny adawlut, be received, tried, and decided as summary suits, unless the plaintiff should in any instance prefer the institution of a regular suit, which is, of course, open to him under the general Regulations in force.—*Chr. Ord. 12th Dec. 1816.* Suits under sec. 15, 16 & 17, reg. 5, 1812, must be received and decided as summary suits, unless the plaintiff prefers a regular suit.

69. The Court of Sudder dewanny adawlut have had before them your letter, dated the 17th instant, requesting their opinion as to the period in which it is incumbent on a ryot's farmer, or dependant talookdar, to institute a suit under the provisions of Section 17, Regulation 5, 1812.—In reply, I am desired to communicate to you the opinion of the Court, that a suit of the nature in question should be instituted within one year from the date of the injury alleged to have been sustained by the illegal sale, conformably to the rules contained in Section 20 of the above cited Regulation, and Clause 1, Section 4, Regulation 2, 1805.—*Con. 467, 25th Jan. 1828.* Suits under sec 17, reg. 5, 1812, must be instituted within one year from the date of the alleged injury

70. The Court having had before them your letter of the 3d ultimo, I am directed to state in reply, that the rule of Section 6, Regulation 17, 1803, which provides, that in cases of illegal distraint, there should be adjudged to the injured tenant restitution of the value lost to him by the distraint, and as much again as damages, is considered by the Court to be equally intended by Section 17, Regulation 5, 1812, which latter rule provides, that the tenant may have his remedy by a summary suit, which was before confined to a regular one. The quantum of the remedy allowed him is not considered to be altered.—*Con. 327, 1st Sept. 1820.* Under sec 17, reg. 5, 1812, the value lost, and as much again as damages, must be adjudged to the injured tenant

## SECTION X.

### *Summary Suits for Arrears or Exactions of Rent—Rates and Contents of Pottahs - Enhancement of Rent.*

71. The approbation of the Collector required to be obtained to pottahs by Section 58, Regulation 8, 1793, is to be considered to extend to the form only. If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs, regarding the rates of the pottahs (whether the rent be payable in money or kind) it shall be determined in the Dewanny adawlut of the zillah in which the lands may be situated, according to the rates established in the purgunnahs for lands of the Rules for determining disputes regarding the rates of pottahs to be granted under reg 8, 1793

same description and quality as those respecting which the dispute may arise.—*Reg. 4, 1794, Sect. 6.*

Rules in the preceding sec. applied to the renewal of pottahs that may expire or become cancelled under reg. 44, 1793.

72. The rules in the preceding section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance under Regulation 8, 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation 44, 1793. And to remove all doubt regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared that no proprietor or farmer of land, or any other person, shall require ryots whose pottahs may expire or become cancelled under the last mentioned Regulation, to take out new pottahs at higher rates than the established rates of the purgunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates, upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance, by Regulation 8, 1793.—*Ibid, Sect. 7.*

Rule applied to the renewal of pottahs that may expire or become cancelled.

73. The rules in the preceding section, are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance, but also to the renewal of pottahs which may expire or become cancelled; and it is declared that no proprietor or farmer of land, nor any other person, shall require ryots, whose pottahs may expire or become cancelled, to take out new pottahs at higher rates than the established rates of the purgunnah, for lands of the same quality and description: due consideration being had, as far as may be required by the custom of the district, to the alteration of the species of culture, and the caste of the cultivator. Under this rule, khoodkhast or chupperbund ryots will be entitled to have their pottahs renewed at the established rates, upon making application for that purpose to the person by whom the pottahs are to be granted, as are also paykhast ryots, provided the proprietor or farmer chooses to permit them to continue to cultivate the land, which they have the option to do or not as they may think proper on the expiration of all paykhast leases; whereas khoodkhast ryots cannot be dispossessed as long as they continue to pay the stipulated rent.—*Reg. 51, 1795, Sect. 10. [This rule applies only to Benares.]*

Distinction as to the permanency of tenure between the khoodkhast and paykhast ryots.

What the pottahs to be delivered to the ryots are to contain.

74. The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the pottah, which, in every possible case, shall contain the exact sum to be paid by them.—*Reg. 8, 1793, Sect. 57. Cl. 1.—Ced. and Cong. Prov. Reg. 30, 1803, Sect. 7, Cl. 1.*

Actual proprietors to let their remaining lands under the prescribed restrictions in whatever manner they may think proper.

75. The zemindar or other actual proprietor of land is to let the remaining lands of his zemindary or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount.—*Reg. 8, 1793, Sect. 52.—Ced. and Cong. Prov. Reg. 30, 1803 Sect. 2.*

76. The Court are of opinion, that the penalties prescribed in the cases of exaction by zemindars or other actual proprietors of land, mentioned in these sections, [viz. *Regulation 8, 1793, Section 51, Clause 2, Section 52, and Section 54,*] must be considered exclusive of the refund of the sums proved to have been illegally levied.—*Con. 125, 22d April 1813.*

The penalties are exclusive of the sums proved to have been illegally levied.

77. In cases, where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation, or on a survey of the crop; or where they are made payable in kind, the rate and terms of payment and proportion of the crop to be delivered, with every condition, shall be clearly specified.—*Reg. 8, 1793, Sect. 4, Cl. 2.—Ced. and Cong. Prov. Reg. 30, 1803, Sect. 7, Cl. 2.*

Rule where the rate only can be specified, and for payments in kind.

78. It is expected, that in time, the proprietors of land, dependant talookdars, and farmers of land, and the ryots, will find it for their mutual advantage to enter into agreements in every instance for a specific sum, for a certain quantity of land, leaving it to the option of the latter to cultivate whatever species of produce may appear to them likely to yield the largest profit: where however it is the established custom to vary the pottah for lands according to the articles produced thereon, and while the actual proprietors of land, dependant talookdars, or farmers of land, and ryots in such places, shall prefer an adherence to this custom, the engagements entered into between them are to specify the quantity of land, species of produce, rate of rent, and amount thereof, with the term of the lease, and a stipulation, that in the event of the species of produce being changed, a new engagement shall be executed for the remaining term of the first lease, or for a longer period, if agreed on; and in the event of any new species being cultivated, a new engagement, with the like specification and clause, is to be executed accordingly.—*Reg. 8, 1793, Sect. 56.—Ced. and Cong. Prov. Reg. 30, 1803, Sect. 6.*

Variations of pottah according to articles of produce admitted under certain restrictions.

79. Such parts of *Regulation 8, 1793*, and of *Regulation 4, 1794*, as require that the proprietors of land shall prepare forms of pottahs, and that such forms shall be revised by the Collectors, and which declare that engagements for rent contracted in any other mode than that prescribed by the Regulations in question, shall be deemed to be invalid, are likewise hereby rescinded. And the proprietors of land shall henceforward be considered competent to grant leases to their dependant talookdars, under-farmers and ryots, and to receive correspondent engagements for the payment of rent from each of those classes, or any other classes of tenants, according to such form as the contracting parties may deem most convenient and most conducive to their respective interests. Provided, however, that nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, whether under the denomination of abwaub, mahtoot, or any other denomination. All stipulations or reservations of that nature shall be adjudged by the Courts of judicature to be null and void. But the courts shall notwithstanding maintain and give effect to the definite clauses of the engagements contracted between the parties, or in other words, enforce payment of such sums as may have been specifically agreed upon between them.—*Reg. 5, 1812, Sect. 3.*

Certain parts of reg. 8, 1793, and reg. 4, 1794, respecting forms of pottahs and engagements for rent rescinded; & proprietors declared competent to grant leases and receive engagements in such forms as may be convenient to the parties.

Such rule not to legalize stipulations for arbitrary or indefinite cesses, which are to be adjudged null and void, but without vitiating the definite clauses of the engagements.

80. In cases, in which no established rates of the purgunnah, or local division of the country may be known, pottahs shall be granted, and the collections made, according to

Rules where no established purgunnah rates exist.

the rate payable for land of a similar description in the places adjacent ; but if the leases and pottahs of the tenants of an estate generally which may consist of an entire village or other local division, be liable to be cancelled under the rules above noticed, new pottahs shall be granted, and the collections made at rates not exceeding the highest rate paid for the same land in any one year within the period of the three last years antecedent to the period at which the leases may be cancelled.—*Reg. 5, 1812, Sect. 7.*

No cultivator or tenant liable to pay enhanced rent unless under written engagements or notice served upon him at the season of cultivation.

81. By the former and present Regulations, persons purchasing land at the public sales, are competent under certain restrictions to annul engagements contracted between the late proprietor of the lands and his under-tenants. But it is hereby declared, that no cultivator or tenant of land shall be liable to pay an enhanced rent, though subject to enhancement under subsisting Regulations, unless written engagements for such enhanced rent have been entered into by the parties, or a formal written notice have been served on such cultivator or tenant at the season of cultivation, viz. on or before the month of Jeth, notifying the specific rent, under the landholder's right of enhancing it, to which he will be subject for the ensuing Fussy, or for the current Bengal year.—*Ibid. Sect. 9*

Cultivator not served with such notice, entitled to a refund of any excess beyond the amount of his previous engagements.

82. Unless such notification be duly served, no greater rent shall be exigible by process of distress or confinement of person, nor recoverable by suit in court, than the cultivator or tenant was bound to pay under his previous engagements ; and if more be levied from him, he shall be entitled to a refund of the excess with damages, on proof of the circumstances before a Court of justice. In all practicable cases the required notification shall be served personally on the tenant ; but if he shall abscond or conceal himself, so that it cannot be served personally upon him, it shall be affixed at his usual place of residence ; which latter process shall in such case be deemed and taken to be a sufficient service of the notification in question.—*Ibid. Sect. 10.*

How such notice are to be served

The preceding provisions applicable to sequestrators, managers & farmers holding under the authority of the board of revenue or board of commissioners

83. The provisions contained in the preceding sections shall be considered equally applicable to sequestrators on the part of Government, to managers on the part of the Court of Wards, and to farmers, whenever estates or portions of estates may be let to farm under the authority of the Board of Revenue or Board of Commissioners.—*Ibid. Sect. 11*

What particulars the notice, under sec 9, as above, must contain.

84. Held, that a notice issued under Section 9, Regulation 5, 1812, must specify the rent to which the parties served with it are to be made liable, and must intimate how the landholder has acquired the right of enhancing the demand.—*S. D. A. Sel. Rep. 29th Feb. 1844, vol. 7, p. 156.*

The notice not vitiated by omitting the quantity of land and the names of the parties in possession

85. Held that a notice issued under Section 9, Regulation 5, 1812, is not vitiated by an omission to specify the quantity of land in the possession of the parties served with it, or of the names of all the parties in possession, it being sufficient to specify the names of those recorded as such in the zemindar's office.—*S. D. A. Sel. Rep. 14th April 1846, vol. 7, p. 261.*

A farmer holding a lease from the manager of an estate, is competent to enforce, sec 9 and 10, reg 5, 1812.

86. A manager of an estate, appointed under Section 26, Regulation 5, 1827, is competent to grant a farming lease of any part of the property under his charge. A farmer holding his lease from such manager is competent to enforce the provi-

sions of Sections 9 and 10, Regulation 5, 1812, in regard to the enhancement of rent.—*S. D. A. Sel. Rep.* 12th Aug. 1846, vol. 7, p. 277.

87. It is hereby enacted, in modification of the provisions of Sections 9, 10, 11 and 13 of Regulation 5, 1812 of the Bengal code, that if any ryot or tenant of land, upon whom such notice or demand as is specified in the said sections is to be served, shall have no place of usual residence in the zillah where the land to which such notice or demand has reference is situate, the mode of serving such notice or demand with a jumma wassil baukoo shall be by affixing it at the maal cutcherry of such land, or other conspicuous place thereon, or at the village chourees, choupal, or other conspicuous place in the village.—*Act VIII.* 1848.

The notice may be served by affixing it at the maal cutcherry of the land, or on some conspicuous place thereon, or in the village.

88. On the first view of Section 10, Regulation 5, 1812, it might be inferred that the zemindars or their representatives possess the power of exacting in the first instance by distraint or by a summary process, whatever amount they may have thought proper to insert in the notification required to be conveyed to their tenant, the latter having only the option of resigning his land, or continuing to hold it subject to pay the enhanced rent, until he can prove the injustice of the demand by a regular suit. Such an interpretation, however, does not seem to be easily reconcilable with that part of Section 7, Regulation 4, 1794. which, being declaratory of the rates at which the ryots were entitled to demand pottahs, and of course, to continue in possession of their lands, cannot be considered as abrogated by Section 3, Regulation 5, 1812, and I have hitherto deemed it necessary to require zemindars and farmers prosecuting summarily for enhanced rent, or defending suits instituted against them under Section 15, Regulation 5, 1812, to show that the amount demanded in the notification served on their tenants was conformable to the purgunnah rates, and the actual extent of land.—The Court entirely concur in the construction of Section 10, Regulation 5, 1812, stated in the sixth paragraph of Mr Scott's letter, dated the 28th July, 1815, and resolve, that he be informed accordingly. The Court observe, that the written notice, required by Section 9 of that Regulation, when no written engagement may have been entered into, expressly refers to tenants subject to an enhancement of rent "under subsisting Regulations," including, of course, the unrepealed provisions in Section 7, Regulation 4, 1794, relative to the renewal of pottahs at the established rates of the purgunnah.—*Con.* 234, 3d Feb. 1816.

It is necessary for zemindars & farmers prosecuting for enhanced rent, or defending suits instituted against them under sec. 15, reg. 5, 1812, to show that the amount demanded in the notice is conformable to the purgunnah rate, and the extent of land.

89. 1. I beg to be informed whether, in the opinion of the Sudder dewanny adawlut, the provisions of Section 15, Regulation 5, 1812, can be considered as applicable to cases in which the zemindars, and their representatives attach the *jotes* of their tenants, or oust them at the end of the year for disputed arrears of rent, accruing on notices served on the cultivators in the manner described in Sections 9 and 10 of the the above Regulation. 2. I make this reference in consequence of frequent applications being made to me by the *ryots*, for injunctions upon farmers and others to refrain from ousting them from their *jotes*, the petitioners being ready to pay the amount of such part of the demand against them as they admit to be legal into court, and to give security, and contest the justice of the remaining part of it, in the manner provided for in Section 15, Regulation 5, 1812.—*Reply of the Sudder.*—I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of a letter from you, dated the 11th instant, requesting the opinion of the Court, whether the provisions of Section 15, Regulation 5, 1812, can be considered applicable to cases, in which a landholder may

The provisions of sec. 15, reg. 5, 1812, apply to cases in which a ryot may wish to give security and contest the zemindar's claim to enhanced rent, under sec. 9 and 10 of that reg. and to attach his *jote* and oust him at the end of the year.

attach the jote of his tenant, or oust him at the end of the year for a disputed arrear of rent. In reply, I am directed to state, that although the provisions of the section cited apply directly to the case only of an attachment of property for an alleged arrear of rent, the spirit and equity of the rule must, in the judgment of the Court, be considered applicable to the case put by you, supposing the requisite conditions, as specified in the section above mentioned, to be performed by the tenant for bringing the question of rent in dispute to a speedy determination in the Civil court.—*Con.* 255, 21st Aug. 1816.

No proprietor of land, or dependant talookdar, or farmer of land, shall cancel the pottahs of khoonkhaast ryots except in certain specified

90. No actual proprietor of land or farmer, or persons acting under their authority shall cancel the pottahs of the khoonkhaast ryots, except upon proof that they have been obtained by collusion; or that the rents paid by them within the last three years, have been reduced below the rate of the nirkbund of the purgunnah; or that they have obtained collusive deduction; or upon a general measurement of the purgunnah for the purpose of equalizing and correcting the assessment. The rule contained in this clause is not to be considered applicable to Behar.—*Reg.* 8, 1793, *Sect.* 60, *Cl.* 2.

Proprietors & farmers of lands how to be proceeded against in case they attempt to increase the rents of the poppy lands

91. If any zemindar or other proprietor of land, or any farmer of land, or their representatives, should exact more from the ryots on account of their poppy lands than the established rates, the agent or the ryot from whom such exactions may be made is to be at liberty to prosecute the person guilty of such exactions in the Zillah or City dewanny adawlut, the Judge of which shall forthwith enquire into the same, and, on proof of the exaction, shall adjudge the person guilty of the offence to restore the amount levied in excess of the established rate, with a further penalty of treble the amount.—*Reg.* 13, 1816, *Sect.* 17.

## SECTION XI.

### *Rules regarding Pottahs—Illegal Impositions on the Ryots.*

Process to be observed to prevent imposition on the ryots under the denomination of abwaub, mhatoot, &c.

92. The impositions upon the ryots, under the denomination of abwaub, mhatoot, and other appellations, from their number and uncertainty, having become intricate to adjust, and a source of oppression to the ryots; all proprietors of land and dependant talookdars shall revise the same, in concert with the ryots, and consolidate the whole with the assul, into one specific sum. In large zemindaries, or estates, the proprietors are to commence this simplification of the rents of their ryots, in the purgunnahs where the impositions are most numerous, and to proceed in it gradually, till completed, but so that it be effected for the whole of their lands by the end of the Bengal year 1198, in the Bengal districts, and of the Fussely and Willait year 1198, in the Behar and Orissa districts, these being the periods fixed for the delivery of pottahs as hereafter specified.—*Reg.* 8, 1793, *Sect.* 54.—*Ced. and Conq. Prov. Reg.* 27, 1803, *Sect.* 53, and *Reg.* 30, 1803, *Sect.* 4.

Proprietors, and farmers of land, prohibited imposing any

93. No actual proprietor of land, or dependant talookdar, or farmer of land, of whatever description, shall impose any new abwaub or mhatoot upon the ryots, under

any pretence whatever. Every exaction of this nature shall be punished by a penalty equal to three times the amount imposed; and if, at any future period, it be discovered, that new abwauk or mhatoot have been imposed, the person imposing the same shall be liable to this penalty, for the entire period of such impositions.—*Reg. 8, 1793, Sect. 55.—Ced. and Cong. Prov. Reg. 30, 1803, Sect. 5.*

new abwauk or mhatoot on the ryots, & penalty in case of disobedience.

94. A claim by a zemindar against his farmer, for a sum of money alleged to have been realized by the latter from the tenantry under the head of *zabita batta*, or customary levy of an excess of half anna in the rupee, and stipulated to be payable to the zemindar, dismissed as illegal.—*S. D. A. Sel. Rep. 16th Dec. 1843, vol. 7, p. 142.*

A claim under the head of *zabita batta* declared illegal.

## SECTION XII.

### *Summary Suits for Arrears or Exactions of Rent—Demand of Pottahs and of Receipts by Ryots—Discharge of Rents.*

95. A ryot, when his rent has been ascertained and settled, may demand a pottah from the actual proprietor of land, dependant talookdar, or farmer, of whom he holds his lands, or from the person acting for him; and any refusal to deliver the pottahs, upon being proved in the Court of Dewanny adawlut of the zillah, shall be punished by the court, by a fine proportioned to the expence and trouble of the ryot in consequence of such refusal. Actual proprietors of land, dependant talookdars, and farmers, are also required to cause a pottah for the adjusted rent to be prepared and tendered to the ryot; either granting the same themselves, or intrusting their agents to grant the same. No farmer however, without special permission from the proprietor of the lands, or (if the lands form part of a dependant talook) the dependant talookdar shall grant a pottah extending beyond the period of his own lease; nor shall any agent grant a pottah without authority from the proprietor, or dependant talookdar, or the manager of disqualified proprietors.—*Reg. 8, 1793, Sect. 59.—Benares Reg. 51, 1795, Sect. 7.—Ced. and Cong. Prov. Reg. 30, 1803, Sect. 11.*

Ryots may demand pottahs of proprietors of lands, and farmers, who are also required to grant them.

Penalty in case of refusal.

Restrictions on farmers and agents in granting pottahs.

96. The Regulations do not authorize any summary process in cases of complaints by ryots and other under-tenants against landholders or farmers for refusing to grant *pottahs* or receipts. But on the ryots establishing their claim to receipts or *pottahs* by regular suit, they would be entitled to receive them as well as damages—*Con. 67, 16th Aug. 1810.*

A claim to receipts or pottahs must be established by regular suits

97. The ryots in the different parts of the country frequently omitting or refusing to take out or receive pottahs, although the persons from whom they are entitled to demand them are ready to grant them, in the form and on the terms prescribed by the Regulations, it is declared, that if a proprietor or farmer of land, or a dependant talookdar, after the approbation of the Collector to the form of the pottah or pottahs for the lands in his estate or farm shall have been obtained, as prescribed in Section 58, Regulation 8, 1793, shall fix up in the principal cutcherry or cutcherries of his estate or farm, a notification in writing under his seal and signature, specifying that pottahs according to the form approved, and at the established rates, will be immediately granted to all ryots

Rules for cases in which ryots omit or refuse to receive the prescribed pottahs.



who may apply for them, and stating where and when and by whom the pottahs will be delivered, the notification shall be considered as a legal tender of a pottah, and the proprietor of land, the farmer, or the dependant talookdar shall be deemed to have complied with the orders in Section 59, Regulation 8, 1793, and the persons so tendering pottahs shall be entitled to recover the rents due to them from such ryots, either by the process of distraint laid down in Regulation 17, 1793, or by suit in the Dewanny adawlut.—*Reg. 4, 1794, Sect. 5.*

Ryots cannot be compelled to take pottahs and give kubooliyuts by a summary suit

98. I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of a letter from you, dated the 29th ultimo, and to observe in reply, that Regulation 5, 1812, contains no provisions for a summary suit to compel ryots to take pottahs and give kubooliyuts; but that landholders may proceed in conformity with Section 5, Regulation 4, 1794, and Sections 9 and 10, Regulation 5, 1812.—*Can. 257, 4th Sept. 1816.*

Proprietors of land, dependant talookdars, farmers, and their agents, to give receipts for all sums received as rent or revenue, under the penalty herein specified

99. Every proprietor of land, dependant talookdar, or farmer of land, of whatever description, and their agents of every gradation, receiving rents or revenues from dependant talookdars, under-farmers, ryots, or others, are to give receipts for all sums received by them; and a receipt in full on the complete discharge of every obligation. Any person to whom a receipt may be refused, on his establishing the same in the Dewanny adawlut of the zillah, shall be entitled to damages from the party who received his rent or revenue, and refused the receipt, equal to double the amount paid by him.—*Reg. 8, 1793, Sect. 63, Cl. 1.*

Case in which the plaintiff's demand for receipts was rejected by the S. D. A.

100. In a suit by a dependant talookdar against a zemindar, for having refused him receipts (*dakhilehs*) on his payment of several years' rent, the Zillah court, under Section 63, Regulation 8, 1793, adjudged to the plaintiff damages equal to double the amount paid. This judgment was reversed, on the ground that the plaintiff demanded receipts for a fixed rent, without any title on his part being proved or appearing probable.—*S. D. A. Sel. Rep. 31st July 1810, vol. 1, p. 304.*

When the dispute is whether the receipts should be given to the parties as ijaradars, or talookdars, sec. 63, as above, is not applicable

101. The plaintiffs sued, as dependant talookdars, to obtain from the zemindar receipts for rent paid by them. The zemindar was willing to grant plaintiffs receipts as ijaradars, but not as talookdars. The Court, on proof that they were talookdars, decreed that the zemindar should grant them receipts as such. The cause of refusal to grant receipts being a dispute concerning the tenure, the provisions of Section 63, Regulation 8, 1793, were not considered applicable to the case.—*S. D. A. Sel. Rep. 25th Jany. 1817, vol. 2, p. 221.*

A suit for receipts brought more than a year after the cause of action arose, dismissed.

102. Under Section 63, Regulation 8, 1793, A. brought an action against B. for having refused to give him receipts [*dakhilehs*] for rent paid. The suit was dismissed with costs, because no dishonest intention was proved against B., and because A. had not brought the suit within one year from the date on which the action originated.—*S. D. A. Sel. Rep. 14th April 1835, vol. 6, p. 26.*

Prohibition, under penalties, to landholders, farmers, and their tenants, to receive or pay the rents by anticipation

103. The landholders and farmers are forbidden to demand or receive, and the ryots and other under-tenants are forbidden to pay, any part of the rents receivable by the former and payable by the latter, before the stipulated or usual period of payment, according to the kistbundy or other engagement, or established local usage; and no person hereafter making anticipated payments against this prohibition, or producing receipts for

such, whether collusive or otherwise, shall be entitled to credit for the amount from the officers of Government who may attach the lands or farm; or from the landholder or farmer making the attachment, if it be made for arrears due from an under-tenant, under the provisions contained in this Regulation.—*Reg. 7, 1799, Sect. 23, Cl. 3.*

104. The proprietors of land, dependant talookdars, and farmers of land, of every description, are to adjust the instalments of the rents receivable by them from their under-renters and ryots, according to the time of reaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule.—*Reg. 8, 1793, Sect. 64.*

Rules for adjusting the motussil kist-bundies

### SECTION XIII.

#### *Summary Suits for Arrears or Exactions of Rent—Period of Leases.*

105. Section 2, Regulation 14, 1793; Section 2, Regulation 50, 1795; and Clause second, Section 2, Regulation 47, 1803, by which the proprietors of land, paying revenue to Government, are precluded from granting leases for a period exceeding ten years, are hereby rescinded; and proprietors of lands are declared competent to grant leases for any period which they may deem most convenient to themselves and tenants, and most conducive to the improvement of their estates.—*Reg. 5, 1812, Sect. 2.*

Rules contained in sec. 2, reg. 44, 1793; sec. 2, reg. 50, 1795, & cl. 2, sec. 2, reg. 47, 1803, precluding proprietors of lands paying revenue to govt., from granting leases for a longer period than 10 years, rescinded

106. Doubts having arisen on the construction of Section 2, Regulation 5, 1812, it is hereby explained, that the true intent of the said section was to declare proprietors of land competent to grant leases for any period, even to perpetuity, and at any rent, which they might deem conducive to their interests. Provided however, that nothing contained in the former or present Regulation, shall be construed to empower persons holding a restricted interest in estates, whether for life or for other limited period, or subject to control or restriction in the use or disposal of the property, to grant leases extending beyond the term of their own interest in the property, or exceeding their power or authority over it.—*Reg. 18, 1812, Sect. 2.*

Explanation of the intent of sec. 2, reg. 5, 1812, as to granting leases in perpetuity or otherwise

107. (*Ceded and Conquered Provinces.*) No zemindar or other proprietor of land in the ceded and conquered provinces shall grant leases or fix the rent of any land tenure for a term exceeding ten years; or if the term of his own engagement with Government be less than ten years, extending beyond such less terms.—*Reg. 14, 1812, Sect. 2.*

No zemindar or proprietor shall grant leases for a term extending beyond the term of his own engagements with govt.

108. (*Idem.*) Any evasion of this prohibition by entering into separate engagements or leases to take effect successively, or by dating an engagement or lease on a day other than that on which it was actually executed, or by any other device, shall be considered as an infringement of it. And every lease or engagement fixing the rent, which has been or shall be concluded or granted in opposition to this prohibition, is declared to be null and void.—*Ibid, Sect. 3.*

Every evasion of this prohibition to be considered as an infringement of this rule, and leases so granted to be null & void.

109. It is hereby enacted, in modification of Sections 2 and 3, Regulation 14, 1812, of the Bengal code, that zemindars or other proprietors of land may grant leases,

Leases may be given for any period not exceeding the term

of the engagement or fix the rent of any land tenure, for any period not exceeding the terms of their own with government.

On what principle a lease for a longer period will be cancelled.

or fix the rent of any land tenure, for any period not exceeding the terms of their own with government. Provided always, that in case any lease shall be granted, or the rent of the land be fixed for any longer period, the lease or engagement fixing the rent shall be null and void only for the excess beyond such terms respectively.—*Act XVI. 1842.*

Rule for apportioning assessment on shares of estates when divided.

110. When a division of a joint estate shall be made on the application of the proprietors, or pursuant to the decree of a Court of justice, the fixed public revenue assessed upon the whole estate shall be apportioned on the several shares agreeably to the principles prescribed in Section 10, Regulation 1, 1793, and Section 7, Regulation 27, 1795, without regard to any engagements that may subsist between the proprietors and their dependant talookdars, (excepting the dependant talookdars described in Section 7 Regulation 44, 1793,) under-farmers, or ryots. But all leases made in conformity to Sections 2 and 3, Regulation 5, 1812, and Section 2 of this Regulation, shall remain in full force, notwithstanding the division of a joint estate among the sharers, or the sale of the whole or a portion of any estate in satisfaction of a decree of court, or the devolving of the same by inheritance, or the private transfer thereof by sale, gift, or otherwise.—*Reg. 18, 1812, Sect. 3, Cl. 2.*

#### SECTION XIV.

##### *Summary Suits for Arrears or Exactions of Rent—Constructions and Decisions of the Sudder Dewanny Adawlut on the subject of Leases.*

A tenant on a perpetual lease may resign his lease at the close of the year

111. Held that a tenant on a perpetual lease has the power, even although in balance, of resigning his lease, if he do it formally and at a proper season, *i. e.* at the close of the year.—*S. D. A. Sel Rep. 12th June 1844, vol. 7, p. 174.*

A lease granted by the court of wards, as guardians of an alleged adopted son, upheld, though the adoption was judicially set aside

112. The Sudder dewanny adawlut held that a Judge might uphold a lease granted by the Court of Wards as guardians of the estate of an alleged adopted son, though the adoption had been set aside by a decree of court, supposing there to be no collusion.—*Con. 540, 26th Feb 1830.*

Leases of the court of wards antecedent to reg 6, 1822

113. Regulation 6, 1822, has retrospective as well as prospective effect; and leases granted by the Court of Wards though antecedent to the promulgation of that enactment, have the same effect and are subject to the same rules and regulations as are applicable to the other persons holding farms under the Collector of land revenue.—*Con. 943, West. C. 6th Feb., Cal. C. 6th March 1835.*

A zemindar can cancel the leases granted by an ijaradar, who had obtained a farm for 5 years, and became a defaulter at the end of 2 yrs.

114. An *ijaradar* obtains a farm for five years, and enters into engagements with the *ryots*; but becoming a defaulter at the end of two years, is ousted by the *zemindar* under Clause 7, Section 15, Regulation 7, 1799. The Judge having asked if a new *ijaradar*, obtaining a lease for the remaining three years, can cancel the leases granted by the first *ijaradar*, was referred to Clause 1, Section 18, Regulation 8, 1819, which empowers the *zemindar* to cancel all leases, &c. intermediate between himself and the actual cultivators —*Con. 502, 24th April 1829.*

115. Courts executing decrees are competent, on a summary investigation, to cancel any lease granted by the party against whom the decree has been given, which may be satisfactorily proved to be fraudulent leaving the parties dissatisfied to appeal summarily, or institute a regular suit to recover possession of their alleged rights.—*Con. 1059, 2d Dec. 1836.*"

Courts can cancel leases granted by a party against whom a decree has been given, if proved to have been fraudulent. Remedy of the lessees.

116. A lessee for life was, by the terms of the lease restricted to the cultivation of indigo. Held, on a liberal construction, that it was not vitiated by the growth of grain necessary for the support of the cultivators.—*S. D. A. Sel. Rep. 16th May 1832, vol. 5, p. 205.*

A lease restricted to the cultivation of indigo not vitiated by the growth of grain necessary for the support of the cultivators.

117. A tenant not having given up possession of two houses after having received warning according to the conditions specified in the lease, it was decided that he should pay the increased rent specified in the notice to quit.—*S. D. A. Sel. Rep. 7th Jan. 1835, vol. 6, p. 15.*

A tenant who retained two houses after having received notice to quit, was required to pay the enhanced rent specified in the notice.

118. In a case of life lease, it was held that repeated transfers of the rights of the lessee, and length of possession, form no bar to the recovery of possession of the lands by the lessor or his representative, on the death of the lessee.—*S. D. A. Sel. Rep. 21st April 1842, vol. 7, p. 94.*

In case of a life lease, nothing can bar the recovery of the lands on the death of the lessee.

119. A lease for life to A. may be assigned and transferred, and will continue during A.'s life.—*S. D. A. Sel. Rep. 16th May 1832, vol. 5, p. 205.*

A lease for life continues during the lessor's life.

120. *Pottahs* granted by the ostensible auction purchaser of lands, and conditioning that at the end of ten years the lease should continue on the same terms [it being then by Regulation 44, 1793, not legal to grant a longer lease than ten years] held to be binding against the real purchaser, and good against his claim to enhanced rent at the end of that term, without, however, affecting the rights of Government, or of any future auction purchaser of the whole *purgunnah*, in case of a public sale for arrears.—*S. D. A. Sel. Rep. 16th Jan. 1827, vol. 4, p. 193.*

Rule in a case of *pottahs* granted by the ostensible auction purchaser of lands, that the lease should continue on the same terms at the end of ten years.

121. A limited lease containing a stipulation of renewal, without any further limitation or phrase which could be so construed as to confer perpetual or hereditary right on the lessees, was limited by the *Sudder dewanny adawlut* to the term of the natural lives of such lessees.—*S. D. A. Sel. Rep. 26th Jan. 1836, vol. 6, p. 49.*

A limited lease, with a general stipulation of renewal, limited by the S. D. A. to the natural lives of the lessees.

122. A planter, lessee of certain lands for the cultivation of indigo, selling his factory to another and transferring his lease, is nevertheless responsible to the lessor for the rents due, under the engagement executed by him as lessee; but has his remedy against the transferee.—*S. D. A. Sel. Rep. 6th May 1836, vol. 6, p. 67.*

An indigo planter taking a lease of lands, and transferring the lease to another is still responsible to the lessor. His remedy.

123. A. received an advance from B. on executing a lease of certain lands for a specified period, with a further condition that, if the debt was not repaid in full on the expiry of the terms of the lease, the lease should be continued to B. till the loan was paid. Two years before the lease expired, B. was ejected in execution of a decree of a Provincial court, for the same lands, obtained by C. against A., which decree was reversed by the *Sudder dewanny adawlut* and the lands restored to A. as proprietor. Held by the *Sudder dewanny adawlut* that under such circumstances B. the lessee, was entitled to recover and hold possession under the terms of the lease until the payment of the debt due to him by A., notwithstanding the expiration of the term of the original lease mentioned in the engagements.—*S. D. A. Sel. Rep. 24th June 1837, vol. 6, p. 175.*

Decision in the case of a particular lease by the S. D. A.

## SECTION XV.

*Summary Suits for Arrears and Exactions of Rent—Cognizance of these Suits by the Collector—their Nature.*

Rules which authorize judges to take cognizance of summary suits, rescinded.

124. Such parts of Regulations 7, 1799; 5, 1800; 18, 1803; 5, 1812; 7, 1813; 19, 1817; 14, 1824, or of any other Regulations in force, as authorize the Judges of the Zillah or City courts, to take cognizance of summary suits or claims relating to arrears or exactions of rent, and to refer the same to the Collector for investigation and decision, are hereby rescinded.—*Reg. 8, 1831, Sect. 2.*

Judicial authorities declared incompetent to receive any claim of the above nature, unless preferred as a regular suit.

125. From and after the date of the promulgation of this Regulation, it shall not be competent to the judicial authorities to receive any claims of the nature above adverted to, unless the complaint be preferred as a regular suit in the mode prescribed by Regulation 4, 1793, and the corresponding enactments.—*Ibid, Sect. 3.*

Summary suits declared cognizable by collectors of land revenue and their decision to be final, subject to a regular suit

126. Summary claims connected with arrears or exactions of rent, shall be preferred in the first instance to the several Collectors of land revenue, whose decisions in such cases shall be final, subject to a regular suit, unless the ground of appeal be the irrelevancy of the Regulation to the case appealed, on which ground only the Commissioner of Revenue for the division is authorized to receive an appeal, if preferred to him within one month of the date of the summary decision. The Commissioner of Revenue after receiving the appeal, and calling for the proceedings in the case shall dismiss the same with costs, if the stated ground of irrelevancy shall not appear to be established. If on the other hand the case should appear to be of a nature not properly cognizable as a summary suit under the provisions of this Regulation, the Commissioner of Revenue shall reverse the irregular judgment given by the Collector, and pass such further orders thereupon as he may think just and proper in pursuance of the Regulations in force, which may be applicable to the circumstances of the case.—*Ibid, Sect. 4.*

On what ground appealable to the commissioner of revenue and how to be dealt with by him.

Summary cases depending in the courts to be transferred to collectors

127. All summary cases of the above nature which may be depending in the Zillah and City courts, at the date of the promulgation of this Regulation, shall be transferred to the Collectors of the several districts for investigation and decision.—*Ibid, Sect. 5.*

All summary suits for rent by holders of rent free lands against their tenants must be tried by the collector.

128. Summary suits for rent instituted by holders of rent-free land against their tenants should be tried by the Collectors under the provisions of Regulation 8, 1831, the Civil courts being incompetent to receive them.—*Con. 837, West. C. 11th Oct., Cal. C. 8th Nov. 1833.*

Idem

129. Claims for the rent of rent-free lands are summarily cognizable by the Collector, equally with those for the rent of land paying revenue to Government.—*Con. 599, 12th Aug 1831.*

Summary suits by malgoozars against putwarces, & agents employed in managing their estates are

130. With reference to the spirit of the provisions of Regulation 8, 1831, the Court are of opinion that it was the intention of the Legislature to render suits of the nature described by the Collector of Banda, viz. summary suits instituted by malgoozars, against putwarces and

other Native agents employed by them in the management of their estates, under Section 37, Regulation 28 of 1803, cognizable by the revenue authorities; and this course appears the more advisable mode of proceeding from the nature of the points which would come under investigation before the officer entrusted with the duty of deciding them.—*Con. 946, West. C. 24th April, Cal. C. 22d May 1835.*

131. On the subject of suits for damages connected with exactions of rent, the Court have already been in communication with the Presidency Sudder. Former Regulations and Circular orders have already determined that such suits were cognizable by the Judges under a summary process; and the courts have therefore ruled, on the principle by which they have throughout been guided, that they are consequently, in the same manner and with the same restrictions, now cognizable by the Collectors under Regulation 8, 1831.—*Civ. Ord. Cal. and West. C. 15th Nov. 1833, par. 3.*

132. On a summary suit under Regulation 7, 1799, by a *zemindar* against a dependant *talookdar*, for arrears of rent calculated according to a survey and measurement, to which the defendant pleaded a right to hold his tenure at a fixed rent, held that the Zillah court is competent to pass a summary order; with a regular suit at the option of the party cast.—*S. D. A. Sel. Rep. 10th Aug. 1807, vol. 1, p. 208.*

133. In a summary suit by the purchaser of a zemindary, against a tenant, for rent at the purgunnah rates, the tenant, who pleaded a fixed *jumma*, not having shown cause why the rent demanded should not be paid, such rent adjudged to the plaintiff, under Regulation 7, 1799, with the option to the defendant to bring a regular suit, the summary decision of the zillah Judge, in such case, not appealable, (except on special grounds,) under the 18th section of the Regulation cited.—*S. D. A. Sel. Rep. 12th Sept. 1808, vol. 1, p. 255.*

134. As the whole of the jurisdiction in cases of summary suits for arrears of rent, formerly vested in the Civil courts, has been, by the provisions of Regulation 8, 1831, transferred to the Collectors of revenue, the Court are of opinion, particularly with reference to the provisions of Section 4 of that Regulation, that the Collector is competent to try all cases of resistance of his process of attachment connected with such summary suits, except when actual breaches of the peace may occur, in which event the case must be tried by the Magistrate.—*Con. 615, 23d Dec. 1831*

135. The provisions contained in Section 15, Regulation 7, 1799; Section 14, Regulation 5, 1800; and Section 32, Regulation 28, 1803, for the arrest of defaulting under-tenants, and their sureties, from whom arrears of rent may be due to proprietors and farmers of land, and for a summary enquiry to be made by the Judges of the Zillah and City courts when the parties so arrested for arrears of rent may be brought before them, are from the terms and objects of such provisions evidently intended to be applicable only to recent arrears of rent, due in the course of the current year, or immediately after the close of it; and it is hereby declared, that the summary enquiry and process authorized by the above Regulations shall not be applied to any arrear of rent, or other demand which may have been due more than a complete year, before the delivery of the petition of arrest, and application for such summary enquiry and process, as directed by the Regulations above cited. Provided however, that this restriction shall not be

cognizable by the collector.

Summary suits for damages connected with exactions of rent are cognizable by the collector.

A suit by a zemindar against a dependant talookdar for arrears of rent, calculated on survey & measurement, may be tried summarily by the collector.

A suit by the purchaser of an estate against a tenant for rent at the purgunnah rate, may be tried summarily by the collector under reg. 7, 1799.

The collector may try all cases of resistance of his process of attachment connected with summary suits, except when actual breaches of the peace occur.

Explanation of provisions in existing regulations for summary process to recover arrears of rent.

Applicable to recent arrears of rent only.

And not to be applied to any demands due for more than a complete year before the application for such process.

But judges, registers, and collectors, in the adjustment of arrears, in such cases, may include arrears due for more than one year, if it appear equitable. considered to preclude the Judges of the Zillah and City courts, (or their Registers, or the Collectors, to whom such enquiry may be committed by them,) from including in the adjustment of recent arrears in such cases, any arrear which may be found due beyond the period of one year, if the same shall appear equitable.—*Reg. 2, 1805, Sect. 4, Cl. 1.*

Collector's jurisdiction restricted to enforcing rents paid in past years, to the exclusion of claims to increase, except on written engagements. 136. In modification of the existing rules regarding summary suits, it is hereby provided, that the summary jurisdiction to be exercised by Collectors shall be restricted to the object of enforcing payments of the rents paid in past years, to the entire exclusion of all claims to increase, except on proof of bonâ fide written engagements to such increase.—*Reg. 8, 1831, Sect. 10.*

What disabilities to attach to zemindars, farmers, or other landholders, who, after the promulgation of this regulation, may refuse or neglect to conform to the rules above provided regarding village accounts. 137. Any such suit instituted in a Court of justice by a zemindar, farmer, or other landholder, who has not conformed to the above rule, [Sections 12, 13, 14, Regulation 9, 1833,] shall be nonsuited with costs; and should he proceed to oust a ryot or other tenant from the land occupied by him, or distrain his property, he shall be liable to damages on account of such illegal acts, to such amount as the court awarding the restitution of such land or property may deem adequate.—*Reg. 9, 1833, Sect. 15.*

On the institution of a suit for rent the plaintiff must prove that he has conformed to the rules laid down in sec. 14 and 15, reg. 9, 1833. 138. Held that on the institution of a suit for rent before a judicial officer, proof must be required that the plaintiff has conformed to the rules laid down in Sections 14 and 15, Regulation 9, 1833; the nature of the proof will of course be such as the plaintiff is able to adduce.—*Con. 884, West. C. 16th May, Cal. C. 13th June 1834.*

Those sections no bar to a suit, till the board of revenue has laid down rules for filing village accounts. 139. Sections 14 and 15, Regulation 9 of 1833, cannot be pleaded in bar of a suit, until the Board of Revenue shall have, under Section 13, prescribed rules for filing village accounts.—*Rep. Sum. Cases, 1st March 1848.*

Collectors shall not take cognizance of complaints specified in preceding clauses, unless preferred within one year. 140. No complaint or application of the nature specified in the preceding clauses, [regarding arrears or exactions of rent] shall be received by a Collector under the rules of this Regulation, unless the plaint or application shall have been preferred within the period of one year after the cause of action shall have arisen.—*Reg. 7, 1822, Sect. 20, Cl. 3.*

Such suits may be heard and decided at all times when the office of the collector is open; but he will exercise a sound discretion regarding the dismissal of them for non-attendance when the civil courts are shut. 141. I am directed by the Sudder Board of Revenue to acquaint you, for the information and guidance of the Collectors of your division, that a reference having been made to the board relative to the propriety of Collectors deciding summary suits under Regulation 8 of 1831, at periods when the Civil courts are closed, the board have held that such suits may be heard and decided at all times when the office of the Collector is open for the despatch of general business, but that it is incumbent on the revenue officers to exercise a sound discretion in regard to the dismissal of suits for non-attendance of the parties at seasons when the regular courts are closed and the transaction of civil business is in a great measure suspended.—*Cir. Ord. 14th Dec 1842.*

In furnishing periodical reports and in the performance of other duties under this regulation, collectors. 142. In furnishing periodical reports of suits decided and depending which may have been instituted under this Regulation, and generally in the performance of other duties connected with its provisions, the several Collectors shall be guided by the instructions

which they may receive from the Revenue Commissioners or the Sudder Boards of Revenue.—*Reg. 8, 1831, Sect. 18.*

Collectors to be guided by instructions from revenue commissioners and sudder boards.

143. In modification of Clause three, Section 8, Regulation 4, 1821, it is hereby declared that assistants to Collectors are not competent to exercise the powers vested in Collectors by this Regulation, unless specially empowered by the Governor General in Council. When thus empowered, they shall be competent to decide suits referred to them by the Collector, subject always to such revision or control on his part as he may see fit to exercise, and subject ultimately to an appeal to the Commissioner of Revenue under the provisions of Section 4 of this Regulation.—*Ibid, Sect. 21.*

Assistants to collectors not competent to decide suits under this regulation, unless specially empowered by the G. G. in C.

144. For the information and guidance of the several revenue officers in your division, I am desired by the Sudder Board of Revenue to acquaint you, that it has been ruled by Government, that decrees under Regulation 8 of 1831, passed by uncovenanted Deputy Collectors, are liable, in common with all other decisions of such officers, to be revised and altered by their covenanted principals. This judicial discretion, however, his Lordship observes, "should be exercised with due regard to circumstances—sometimes the revision will be largely, sometimes sparingly, effected. In the case of suits under Regulation 8 of 1831, a judicious officer will, for the most part, use his power of revision very sparingly."—*Sud. Bd. Rev. Cir. Ord 28th Aug 1840*

Revision of the decisions of uncov deputy collectors by the collector.

145. With reference to Circular order, dated 28th August, 1840, No. 33, and in order to secure uniformity of practice in regard to the revision exercised by Collectors over the proceedings of their uncovenanted deputies in summary suits for rent, the Sudder Board of Revenue, in accordance with a suggestion made by Government, request that you will direct the attention of the Collectors in your division to the following rule:—The Circular of the 28th August, 1840, does not render it necessary for Collectors "to admit, as a matter of course, all petitions of appeal that may be presented to them against summary decisions by their deputies. A Collector, looking to the monthly returns of his deputies, will occasionally call for cases and revise them, and though he may sometimes be induced by the statements of a petition to call for the case to which it relates, he will never consider himself obliged to proceed in the appeal, merely because a petition is presented. He will take care to watch attentively the proceedings of his subordinates, and he will be guided in the extent of his revisions chiefly by the degree of confidence which he may repose in their probity and discretion."—*Sud. Bd. Rev. Cir. Ord. 29th April 1842.*

Mode in which the collector will exercise his power of revising the decisions of his uncov assistants.

146. It shall be competent to the Collectors to hear and determine such suits in whatever part of the district they may occasionally be, or reside, provided that every hearing and decision be in public catcherry, or in some other place open to the public, and in the presence of the parties, or of their constituted agents or vakeels, if in attendance.—*Reg. 14, 1824, Sect. 9.*

Collectors competent to determine such suits in any part of the district provided the proceedings be held in public

147. A Collector is not personally amenable to the Civil court for acts done by him under Regulation 8, 1831.—*Rep. Sum. Cases, 15th June 1847.*

A collector is not personally amenable to the civil courts for acts done under reg 8, 1831

148. Summary suits for rent are not cognizable by Sudder Ameen or Moonsiffs.—*Con. 250, 22d May 1816.*

Summary suits not cognizable by S. A. or moonsiffs.



The collector is not at liberty to reject summary suits, under reg. 7, 1799, however small the amount sued for.

149. The Court of Sudder dewanny adawlut have had before them your letter, dated the 10th August, 1829 requesting to be informed whether the present practice of receiving summary petitions, and issuing process against defaulting cultivators for arrears of rent, however small the amount, is to be permitted to continue, and whether you are at liberty to dismiss the whole of such summary suits now pending.—In reply I am desired to acquaint you that, under the existing Regulations, a person to whom arrears of rent may be due is authorized to proceed against the defaulter, either by distraint of his property or attachment of his person; and he may exercise the option allowed him in such mode as he may conceive most convenient to himself. You are consequently not at liberty to reject summary suits instituted under Regulation 7, 1799, whatever may be the amount sued for, and you will be pleased to proceed in due course to the adjudication of those now pending.—*Con.* 519, 21st Aug. 1829.

Collectors declared competent to reject a summary suit by a Persian order on the back of the petition, and judicial authorities authorized to receive such petition as a plaint in a regular suit

150. It is further hereby declared competent to a Collector to whom a summary suit may be preferred under the provisions of this Regulation, to reject the same by a Persian order to be written on the back of the petition, to be returned to the party, referring him to a regular suit; and the said petition shall be received by the judicial authorities as a petition of plaint in like manner as if the claim had been originally preferred to them in the form of a regular suit.—*Reg.* 8, 1831,  *Sect. 9. Cl. 1.*

Proviso

151. Provided however, that it shall be competent to a Commissioner of Revenue on summary appeal to direct the Collector to receive and decide such suits, as well as to give such general instructions relative to the admission or rejection of suits referring to the matters in question, as local or other circumstances may in his judgment render necessary.—*Ibid.*  *Cl. 2.*

The collector exceeds his authority in referring summary suits to moonsiffs to be tried as regular.

152. I am directed by the Court to acknowledge the receipt of your letter of the 1st instant, and in reply to inform you, that they entirely concur with you in opinion that the Collector exceeded his competency under Section 9, Regulation 8, 1831, in referring summary suits to Moonsiffs to be tried as regular.—*Con.* 879,  *Cal. C. 11th April, West. C. 2d May 1831.*

The collector will conform strictly to the rules above (150) and when rejecting a summary suit will do so by a Persian order on the back of the petition, and return it to the party.

153. The Court have observed that some Collectors have transferred to the Zillah courts a large number of summary suits for arrears of rent pending on their files, and that the zillah and city Judges have received those suits contrary to the evident intent of Clause 1, Section 9, Regulation 8, 1831. They beg to recommend that the Collectors be enjoined strictly to follow the rule laid down in that clause; which prescribes that when they reject a summary suit they shall do so by a Persian order written on the back of the petition, and return the petition to the party, referring him to a regular suit, when he will be able at once to present the petition to the Moonsiff, in the event of its being cognizable by that officer; otherwise to the Judge, who will immediately refer it to the Principal Sudder Ameen or Sudder Ameen by whom it may be cognizable. The Governor of Bengal sanctioned the recommendation.—*Cu Ord. Cal. and West. C. 27th Feb. 1835.*

## SECTION XVI.

*Summary Suits for Arrears and Exactions of Rent—Institution of Regular Suits in the first Instance.*

154. By Section 20, Regulation 5, 1812, it is provided, that suits instituted under that Regulation for the recovery of arrears of rent may be decided by the zillah and city Judges on summary enquiry; it was not, however, intended by that provision to preclude individuals from instituting a regular suit in the first instance for the more formal investigation of the merits of the case, either before the Moonsiffs or in the Zillah and City or Provincial courts, according to the amount at issue, and the zillah and city Judges are hereby enjoined to encourage, as much as possible, that mode of procedure, as well in the suits above adverted to, as in all other claims for arrears of rent, which may be cognizable by summary process under the existing rules, whenever it may in their opinion lead to a more prompt and satisfactory determination of the points at issue.—*Reg. 2, 1821, Sect. 4.*

City and zillah judges to encourage the institution of regular, instead of summary suits, in certain cases.

155. With a view to give additional encouragement to parties having claims to arrears of rent, to prefer regular suits on account of the same, it is hereby declared that the plaint in all such regular suits, if under the existing Regulations they would have been cognizable as summary suits, may be written on paper bearing a stamp of one-fourth the prescribed value. Provided however, that this rule shall not be considered applicable to a suit instituted with a view to set aside a previous summary decision, which suit shall be subject to the ordinary provisions for the payment of stamp duty.—*Reg. 8, 1831, Sect. 8.*

Plaints in regular suits for arrears of revenue, if cognizable as summary suits, may be preferred on paper of one-fourth the prescribed value.

156. I am directed to inform you, that the cases therein alluded to, if connected with arrears or exaction of rent, are cognizable as summary suits by the Collector under the provisions of Regulation 8, 1831, and (except where summarily tried by the Collector,) as regular suits by the Moonsiffs on stamped paper of a quarter the full value, if within the amount cognizable by those officers, under Sections 8 and 11 of that Regulation.—*Con. 714, Cal. C. 31st Aug., West. C. 5th Oct. 1832. par. 2.*

Cases of arrears or exactions of rent may be tried by the moonsiffs on stamped paper of a quarter the full value, if within the limit of their cognizance.

157. In reply to your third question, the Court direct me to state that they consider the above rules [Rule 156] applicable both to ryots and under-tenants resisting undue demands, and to zemindars and others claiming their just dues.—*Ibid, par. 3.*

These rules apply equally to ryots and others resisting undue demands as to zemindars and others claiming their just dues.

158. Diversity of practice having been found to prevail in respect to the applicability, or otherwise, of Section 8, Regulation 8 of 1831, to claims regarding *exactions* as well as *arrears* of rent, the Court notify that, on a late reconsideration of the subject, it has been determined by a majority of the Courts at Calcutta and Allahabad, that Construction No. 714, declaring the applicability of Section 8, Regulation 8, 1831, to claims regarding *exactions* as well as *arrears* of rent, and consequently making such claims cognizable by Moonsiffs as regular suits on one-fourth stamp ought to be adhered to. Should, therefore, the practice obtain in any district of requiring claims regarding exactions to be brought on stamped paper of the full value, it must be forthwith altered.—*Cir. Ord. 18th Feb. 1842.*

Claims regarding exactions of rent are cognizable by moonsiffs as regular suits on one-fourth stamp.

Civil courts may receive suits for rent on quarter stamp, though they have not been instituted in the first instance before the collector.

The only difference between suits under sec. 8, reg. 8, 1831, and other regular suits is, the relinquishment of one-fourth stamp by govt. to encourage parties to sue regularly, instead of summarily.

Pleadings and all other papers in suits under sec. 8, reg. 8, 1831, must be written on stamped or plain paper, according to the circumstances of the case.

Moonsiffs appointed under reg. 5, 1831, declared competent to award damages in cases of illegal distraint or attachment.

Rules prohibiting award of damages by moonsiffs, declared inapplicable to such cases.

159. The Civil courts are competent to receive suits for rent on quarter stamp ; it is not necessary that they should first be instituted before the Collector as summary suits, and by him transferred to the Civil court.—*Con. 967, Cal. C. 14th Feb., West. C. 26th March 1834.*

160. I am directed by the Court to acknowledge the receipt of your letter of the 3d instant and in reply to inform you, that in suits instituted under Section 8, Regulation 8, 1831, the full fees of the pleaders must be deposited, the pleadings must be filed, and all the forms enjoined for the conduct of regular suits must be observed. The only exemption contemplated by the section in question is the relinquishment, on the part of Government, of three-fourths of the stamp duty levied in lieu of the institution fee, with a view of inducing parties to institute regular instead of summary suits.—*Con. 930, Cal. C. 23d Jan., West. C. 27th Feb. 1835.*

161. It has been ruled that suits instituted under Section 8, Regulation 8, 1831, are to be considered in all respects as regular civil suits ; consequently the pleadings and all other papers should be written on stamped or plain paper, according to the circumstances of the case, in the same manner as if the suit had been instituted on full stamp —*Con. 1001, Cal. C. 12th Feb., West. C. 4th March 1836.*

162. In those districts in which Moonsiffs may be appointed under the provision of Regulation 5, 1831, those Moonsiffs shall be competent. in addition to the authority now possessed by Moonsiffs generally, of receiving, trying, and deciding claims to arrears of rent preferred by regular suit, in like manner to dispose of all claims preferred by under-tenants or others, who may be desirous of resisting the distraint of their property or the attachment of their persons ; or who may prefer a claim for damages on account of such acts.—The rule contained in Section 13, Regulation 23, 1814, or any other Regulation, prohibiting the award of damages by Moonsiffs, shall not be considered applicable to such claims.—*Reg. 8, 1831, Sect. 11.*

## SECTION XVII.

### *Summary Suits for Arrears and Exactions of Rent—Disturbance—Process of Arrest, and Proceedings thereupon.*

Any landholder or farmer to whom an arrear of rent may be due from an under-tenant which cannot be realized by distress may cause the arrest of the defaulter and his surety in the manner following

163 Any zemindar, talookdar or proprietor or farmer of land, to whom an arrear of rent may be due from a dependant talookdar, katkenadar, jotedar, or other under-tenant of whatever denomination, which cannot be realized by distraining the personal property of such under-tenant, and his surety (if he shall have given security) is at liberty, after demanding such arrear from the defaulter, and from his surety if forthcoming, or without any express demand if he have reason to believe that the defaulter or his surety is prepared to abscond, to cause the immediate arrest of such defaulter and his surety in the manner following.—*Reg. 7, 1799, Sect. 15, Cl. 1.*

Petition to be presented to judge of the dewanny adawlut.

164. The proprietor or farmer to whom the arrear may be due or his authorized agent, is at liberty to present a petition to the Judge of the Zillah dewanny adawlut [now to the Collector].—*Ibid, Cl. 2.*

165. It appears to the Court, that the term "farmer of land" in the fourth clause of Section 15, Regulation 7, 1799, is used in a general sense, and includes the description of under-farmers described in your letter, [that is, duryardars or under-farmers of every description].—*Con. 278, 9th July 1817.*

Definition of the term "farmer of land," as above.

166. In reply to a reference from the acting Judge of zillah Juanpore, the Court determined on the 26th March, 1808, that the provisions of Section 14, Regulation 5, 1800, [corresponding with Regulation 7, 1799, Section 15.] are equally applicable to persons in possession of estates under deeds of mortgage, as to regular proprietors and farmers of land.—*Con. 35, 26th March 1808.*

Sec. 15, reg. 7, 1799 applies equally to persons holding estates under deeds of mortgage.

167. The Court are of opinion, that the whole of the provisions of Section 15, Regulation 7, 1799, are equally applicable to defaulting tenants and their malzamin; but they cannot be applied to the hazirzamins, unless the defaulters for whose appearance they are responsible abscond, in which case, the hazirzamin, as well as the malzamin, is answerable for what may be due from the defaulter, and may be proceeded against accordingly.—*Con. 41, 13th Sept. 1808.*

The provisions in sec. 15, reg. 7, 1799, apply to defaulting tenants & their malzamin; but not to hazirzamins, unless the defaulter absconds.

168. The Court request that you will prohibit the Moonsiffs of your district, from receiving and acting upon petitions for the arrest of defaulters, presented by zemindars under the provisions of Clause 2, Section 15, Regulation 7, 1799.—*Civ. Ord. Cal. and West. C. 13th July 1832.*

Moonsiffs cannot receive and act on petitions under cl. 2, sec. 15, reg. 7, 1799.

169. The petition of arrest, to be presented under the above clause, as well as any petitions for the arrest of defaulting under-tenants or their sureties, which may be hereafter presented under the Regulations abovementioned, shall specify, besides the name and residence of the defaulter and surety, and the mehal for which the balance of rent is claimed, the annual jumma of such mehal; the amount demandable for the kists of the current year which may have become payable, the amount received from the tenant or his surety, and the balance actually due for the payment of which the arrest is desired. The petition shall also state whether the arrear claimed has been demanded from the defaulter or his surety, and the result.—*Reg. 19, 1817, Sect. 15, Cl. 2.*

What such petition is to contain

170. Plaintiffs in summary suits may prefer their claims in person or by vakeel, and are not required to prefer them on oath or solemn declaration.—*Con. 110, 3rd Sept. 1812.*

Plaintiffs in summary suits may prefer their claims in person or by vakeels. No oath, or declaration is required.

171. The rules in the whole of the preceding sections for the recovery of arrears of rent due to proprietors and farmers of land, are to be considered equally applicable to the managers of the estates of disqualified landholders, and of joint undivided estates; as well as to Collectors or other public officers holding lands in attachment for the purpose of adjusting the public assessment on them, or for any other purpose; or making a khaus collection on the part of Government, where no settlement has been made with any proprietor or farmer; and the authorized agents of such managers, Collectors, or other public officers, provided they be so commissioned and instructed, are to exercise the same authority as is vested in the agents of proprietors and farmers of land by Section 2 of this Regulation.—*Reg. 7, 1799, Sect. 19.*

Rules in preceding sections applicable to managers of estates of disqualified landholders, and of joint undivided estates, as well as to the officers of govt holding lands in attachment, or under a khaus collection.

A summary suit will not lie against all the defaulters of a village collectively, they not being connected with each other except by living in the same village.

172. I am directed to inform you that the practice described in the latter part of your 2d paragraph, of allowing a single suit to be instituted against a large portion of the inhabitants of a village for arrears of rent, when such inhabitants are not otherwise connected than as dwelling in the same village, and do not jointly cultivate any piece of land, is irregular and objectionable; nor does it appear to the Court a sufficient reason that the original summary suit was admitted in that shape. The limit laid down in the first part of the same paragraph, with regard to including several ryots in one suit, [that is, only those who conjointly cultivated any parcel of land and were conjointly answerable for the rent,] is in the Court's opinion judicious, and should be invariably observed.—*Con. 860, West. C. 7th, Cal. C. 28th Feb. 1834.*

Judge how to proceed if the petition of arrest be presented to him in the first instance.

173. If the petition of arrest stated in the preceding clause, be presented in the first instance to the zillah Judge (and to save time, it is allowed to be presented either in or out of court, and by any authorized agent, whether one of the established vakeels of the court or otherwise) the Judge, if the defaulter or surety be within his jurisdiction, is immediately to issue a dustuk for the arrest of such party and to bring him before the court, unless he pay the arrear demanded, and if such payment be not made on the service of the dustuk, or within twenty-four hours afterwards (which time is to be allowed to the party arrested to adjust the demand) the officer charged with the dustuk is to complete the execution thereof by conveying the party to the Zillah court. Provided however, that if the party arrested shall by a written application, request a longer period than twenty-four hours to adjust the demand against him, and the party causing the arrest shall, by a written superscription or endorsement on such application, acquiesce therein, the officers charged with the dustuk shall delay the execution accordingly; and whenever the party at whose instance the dustuk may have been issued shall, by a written durkhaust, declare himself satisfied, and desire the arrest to be withdrawn, it shall be immediately withdrawn accordingly, the officers charged with the dustuk, (who are never to exceed two in number, unless in any particular cause a greater number be considered necessary to prevent escape,) being at the same time paid the tulubanaali due to them according to the rate established by Section 3 of Regulation 14, 1793, viz. two annas per diem, or any lower rate that may have been the customary allowance to persons deputed with revenue processes.—*Reg. 7, 1799, Sect. 15, Cl. 3.*

Dustuk for arrest issued by the Judge how to be executed.

Dustuk when to be withdrawn.

Number of officers to be charged with dustuk

Rate of tulubanaali to be allowed them

The notice directed by sec. 2, reg. 2, 1806, is not applicable to the summary process provided for by sec. 15, reg. 7, 1799

Optional for zemindars to take out arrest from the court having jurisdiction over the tenure.

Or from that of the place of residence.

174. On a reference to the Sudder dewanny, the Register of the Dewanny adawlut, zillah Purnea, was informed on the 18th July, 1807, that the Court were of opinion, that the notice directed by Section 2, Regulation 2, 1806 is not applicable to cases of summary process provided for by Section 15, Regulation 7, 1799.—*Con. 30, 18th July 1807.*

175. In addition to the rules contained in Section 15, Regulation 19, 1817, it is hereby provided that any zemindar, talookdar, farmer, or other person entitled to receive rent, who may desire to take out summary process against the person of a defaulter, shall be at liberty to make application for the purpose either to the Judge of the district within which the land may be situated, or of the district wherein the defaulter may be at the time resident, at his option. In the event of his applying to the Judge of the district, within which the defaulter may not be resident, the process shall be transmitted by

dawk to the Judge of the district where he may reside, in order to be there served in the usual form. The defaulter, if apprehended, shall be sent over in custody; or if he should not be found, so that the process cannot be served, a return shall be made accordingly, and the deposition of the peon employed shall further be taken, to be sent along with the return for the satisfaction of the Judge issuing the process, as to the efforts made to apprehend the defaulter.—*Reg. 8, 1819, Sect. 19.*

Process in the latter case.

176. The summary process authorized by clauses first, second, third, fourth, fifth and sixth of Section 15, Regulation 7, 1799, for the arrest and confinement of defaulting under-tenants of land and their sureties, shall not be applied to under-tenants employed in the manufacture of salt during the manufacturing season, as described in Section 18, Regulation 29, 1793, viz. from the commencement of the month of Kartick, to the end of the month of Assar. The rent payable by persons so employed can seldom be so considerable as not to be recoverable by distraining their crops and other personal property as authorized by Regulations 17, 1793; 35, 1795; and 7, 1799; provided the distress be levied in due time; but if in any instance an arrear of rent should be due from a person employed in the manufacture of salt which cannot be realized by distraining his crops and other personal property (and that of his surety if he shall have given security,) the proprietor, or farmer of land, to whom such arrear may be due, or his authorized representative, is to proceed for the recovery of it in the mode directed by Section 19, Regulation 29, 1793, which is still to be considered in full force, as well as Sections 20 and 21 of the same Regulation, notwithstanding any part of Regulation 7, 1799, or any other Regulation passed antecedent to this date.—*Reg. 9, 1801, Sect. 2.*

The summary process authorized in clauses 1 to 6 of sec. 15, reg. 7, 1799, shall not be applicable to under-tenants employed in the salt manufacture, during the manufacturing season.

Such persons to be proceeded against as directed in sec. 19, reg. 29, 1793, & other sections.

177. Summary claims of the nature above adverted to, which may be preferred to a Collector conformably with Section 4 of this Regulation, shall be written on paper bearing a stamp of one-fourth the value which would have been required had the claim been instituted in any Civil court as a regular suit.—Provided however, that the Collector shall have a discretion to receive a complaint on paper, bearing a stamp of eight annas, from any dependant talookdar, farmer, or ryot, if the complainant is bona fide unable to pay the price of the prescribed stamp, or if the Collector should, for other reasons, consider the indulgence proper.—*Reg. 8, 1831, Sect. 7.*

Value of stamped paper on which summary claims may be preferred to a collector.

Proviso.

## SECTION XVIII.

### *Summary Suits for Arrears and Exactions of Rent—Ishtihar—Summary Investigation—Vakeels—Decision.*

178. After process of arrest may have been taken out in the usual form, if the return of the nazir be, that after diligent search the party cannot be found, it shall be optional with the plaintiff to move the court by his vakeel or authorized agent to solicit a postponement of the case for a month, in order to cause another process to be served at any time in the course of it, that may afford the chance of securing the person of the defaulter, and then to have a notice issued and the case brought to judg-

Summary decree to pass ex-parte in case of return non-inventus

Form to be observed.

ment or to cause proclamation to be made without such postponement, that after fifteen days from the date of notice, the court will proceed to a summary investigation of the balance, and in case of the non-attendance of the defendant will pass judgment summarily upon the documents and proofs that may be exhibited by the plaintiff *ex-parte*.—*Reg.* 8, 1819,  *Sect.* 18,  *Cl.* 3.

Summary enquiry to be made by the Judge upon a party being brought before him under either of the two preceding clauses.

179. When a defaulter or his surety may be brought to the Zillah court under either of the two preceding clauses, [Rules 164 and 173 of this chapter] the Judge shall call upon him to answer the demand against him, and if he deny it, or any part of it, shall enter upon a summary enquiry into the merits of it, by examining the vouchers and accounts of the parties. The landholders and farmers are allowed to employ any vakeel they may think proper to appoint, provided he be duly empowered by them, to attend such enquiries, before the Collectors, as well as the summary enquiry directed in this Regulation before the Judge.—*Reg.* 7, 1799,  *Sect.* 15,  *Cl.* 1.

The collector how to be guided in the decision of such suits.

The collector invested with the same powers as the civil courts in issuing all processes.

Except the execution of decrees

180. In the trial and decision of such suits, the Collector shall be guided by the rules contained in this Regulation, and upon points to which these may not be applicable by the rules prescribed for the guidance of the Civil courts in the trial and decision of summary suits of the same description. The Collector shall also possess the same powers as are vested in the Civil courts for causing the attendance of parties and witnesses, and generally for all processes which it may be necessary to issue in such suits, except the execution of decrees, respecting which the following rule is to be observed.—*Reg.* 14, 1824,  *Sect.* 4.

The parties are competent to appoint any vakeel or representative they may think proper

The remuneration of such vakeel to be adjusted between himself and constituent

181. It shall be competent to the parties in all suits, the cognizance of which is hereby vested in the Collectors of revenue, to employ any agent, vakeel or representative, whom they may think proper to appoint, to act and plead in their behalf, provided such agent, vakeel or representative, be duly empowered by the parties. The rate of remuneration to such agent or vakeel shall be left to be adjusted between himself and his constituent; but no greater sum shall be awarded on this account for costs payable by the party against whom the judgment may be passed than what may be deemed by the Collector a fair equivalent for the attendance of such agent —*Ibid.*,  *Sect.* 6.

The court is at liberty to reduce the fee of the vakeel to such sum as may appear reasonable.

182. By Construction 300 it was ruled on the 29th January, 1817, that under Section 32, Regulation 27, 1814, vakeels employed in summary suits for rent, were entitled to a quarter of the fee which they would have received, had the suit been regular. But on the 11th December, 1818, it was held by Construction 297, that as that section had been rescinded by Section 9, Regulation 19, 1817, which makes the rule contained in Clause 11, Section 2, Regulation 26, 1814, applicable to such summary suits as well as to summary appeals from dismissals on default, the Court is at liberty to reduce the fee to such sum as may appear reasonable.—*Con.* 297, 11th Dec. 1818.

No other pleadings requisite than a plaint and answer.

183. No other pleadings shall be required from the parties in such suits than a plaint and answer, provided that if the parties should, at any time, wish to file an amended

plaint, or an amended answer, or any explanatory motion, such subsidiary pleadings shall be received.—*Reg. 14, 1824, Sect. 7.*

184. No fees shall be taken on exhibits, tendered in the cause, or for the witnesses required by the parties, nor shall it be necessary for the parties to present a written motion on stamped paper for the filing of such exhibits, or for the summoning of such witnesses.—*Ibid, Sect. 8.*

No fees to be taken on the exhibits.

185. Whenever a dependant talookdar, or kutkenadar or other under-tenant of land, or his surety may be arrested, on the demand of an arrear of rent, under the summary process authorized by the Regulations specified in the preceding section, and may deny that the arrear demanded or any part of it is owing; and such under-tenant, or surety, shall tender sufficient security for his personal attendance during the prescribed summary enquiry, it shall be competent to the Judge to receive such security, and to admit the tenant or surety to bail, until the enquiry directed to be made in such cases, by examining the accounts and vouchers of the parties, or by referring the case for adjustment to the Collector of the district, shall be completed, and a decision passed thereupon.—*Reg. 19, 1817, Sect. 16, Cl. 2.*

Judge on receiving sufficient security, may during a summary enquiry admit a defaulter or surety to bail.

186. With regard to the general question referred in the second paragraph of your letter, viz. "whether in a suit instituted under the provisions of Regulation 7, 1799, the Judge is warranted in deputing an Ameen, for the purpose of local investigation," the Court are of opinion that although such deputation should not be ordered in summary suits without necessity, the zillah Judge is not restricted by any provision in Regulation 7, 1799, from directing a local enquiry, when it may appear to him indispensably requisite for the purpose of ascertaining the rent demandable in the case.—*Con. 265, 19th Feb. 1817, par. 2.*

When it may be indispensably requisite to ascertain the rent demandable, the collector may depute an ameen for the purpose of local investigation.

187. Whenever, from the great accumulation of suits connected with claims to arrears or exactions of rent, or from any other cause, it shall seem advisable, the several Collectors are hereby authorized, with the previous sanction of the Commissioner of the division, to refer to the tehseeldars within their respective districts, any such claims with a view to their being adjusted and reported upon, and the several tehseeldars shall be guided in the performance of this duty by the rules which were declared applicable to the proceedings of Collectors in similar references, prior to the enactment of Regulation 11, 1824.—*Reg. 8, 1831, Sect. 13.*

Collectors authorized, with the permission of commissioner of revenue, to refer summary cases for adjustment and report to tehseeldars, who are to be guided in such cases by the rules applicable to collectors prior to the rules of reg. 14, 1824.

188. The Court further observe, that a zemindar, talookdar, farmer, or other landholder, who, in a summary suit, can shew by his village accounts, (proved to be kept in a regular form and to be true accounts,) or by any other probably true evidence, that the arrear demanded by him is due by the defendant, he is entitled under the existing law, to a decree for the amount of the arrear, although he may not have granted a pottah to the defendant, or have received a kubooliyut from him.—*Con. 574, 17th Sept 1830, par. 3.*

A zemindar, &c. is entitled to a decree for arrears of rent, though he may not have granted a pottah to the ryot, or received a kubooliyut.

189. The Court do not hold the existence of a *kubooliyut*, or written engagement on the part of the ryot, to be essentially required to enable the landholder to institute a summary suit against him under Regulation 7 of 1799; but that, on the contrary, the courts are competent to decree such arrears as may be proved to be *bonâ fide* and equitably due by an examination of the

A kubooliyut is not necessary. The collector may decree such arrears as appear *bonâ fide* due on the accounts & vouchers of the parties.



vouchers and accounts of the parties, as prescribed by Clause 4, Section 15, Regulation 7, 1799.—*Con.* 380, 15th April 1825, par. 3.

In what cases the defendant is to be discharged with costs and damages.

Defendant to be kept in close custody if the arrear demanded or a considerable proportion thereof be found due from him, and to pay costs and interest.

Subsistence allowance to be paid by plaintiff to the defendant whilst in confinement.

190. The Judge after receiving the Collector's report, if the case be referred to him for adjustment, or after completing his own enquiry, if it be not so referred, is to discharge the defendant, with full costs and damages, if it appear that no arrear is due from him; or that the arrear demanded has been wilfully misstated by the plaintiff and a considerable proportion of the demand is not justly due to him. But if it appear that the arrear demanded, or a considerable proportion thereof be justly due from the defendant, he is to be kept in close custody, until he pay the amount, with all costs, and interest on the arrear at the rate of one per cent. per mensem; or until plaintiff make application to the court for his release. The plaintiff is to pay to such defendants, whilst in confinement, the same allowance for their subsistence as is fixed for other prisoners in the jail of the Dewanny adawlut by Section 8 of Regulation 4, 1793, viz. such allowance as the Judge may think proper on consideration of the rank and situation of the prisoner, not exceeding four annas, nor less than one anna per diem, and the payment is to be made in the same manner and under the same provisions as prescribed in the above section.—*Reg.* 7, 1799, *Sect.* 15, *Cl.* 5.

The decree of a collector on a summary suit is no ground of action against a third party.

191. A Collector's decree on a summary suit for arrears of rent, forms no ground of action against a third party.—*S. D. A. Sel. Rep.* 5th Dec. 1844, vol. 7, p. 186.

[Wherever in any of the above, or in any subsequent enactments regarding summary suits for arrears or exactions of rent, the Judge is alluded to in reference to the trial of these suits, the reader is requested to substitute the word Collector]

## SECTION XIX.

### *Summary Suits for Arrears and Exactions of Rent—Execution of Collector's Award.*

Collectors are authorized to execute their summary awards.

192. Collectors are empowered and authorized to execute their summary awards under Regulation 8, 1831.—*Con.* 677, 24th Feb 1832.

The rules for the execution of awards prescribed in Cl. 3, sec. 24, reg. 7, 1822, declared applicable to awards of collectors under this reg.

193. Such part of clause three, Section 25, Regulation 7, 1822, as relates to the execution of awards in cases where a specific sum of money shall be adjudged to be due, or any cost or damage be awarded, is declared equally applicable to the awards which may be made by Collectors under this Regulation.—*Reg.* 8, 1831, *Sect.* 20.

Collectors authorized to execute awards made by them.

194. Collectors of the land revenue are hereby empowered to execute all awards made by them under the rules of this Regulation, in cases wherein a specific sum of money shall be adjudged to be due, or any costs or damages be awarded; the Collector decreeing the same shall proceed to levy the amount for the party in whose favor it may be adjudged by the process in use for the recovery of arrears of the Government revenue.—*Reg.* 7, 1822, *Sect.* 23, *Cl.* 3.

The sale of real property on any other land than that in re-

195. The Sudder Board view as illegal the sale, in execution of a summary decree for rent, of houses, and trees, or other real property, situated on any other land than the tenur on

which the default has occurred, and on account of rent of which decree has passed.—*Cir. Ord. Sud. Bd. Rev. 20th March 1846.*

196. Be it enacted, that such parts of clause 7, Section 15, Regulation 7, 1799 of the Bengal code, and other Regulations in force, as vest the Judge of Dewanny adawlut with the power of bringing to sale, in execution of summary decrees for rent, the talook or other tenure of the defaulter, and so much of clause 3, Section 23, Regulation 7, 1822 of the same code, as prohibits the Collectors from selling land in satisfaction of summary awards for arrears of rent which may have accrued thereon, be rescinded, and that the power heretofore vested in the Judges of the Dewanny adawlut of selling land in satisfaction of summary decrees for rent, be transferred to Collectors of land revenue.—*Act VIII. 1835, Sect. 1.*

gards to which the summary decrees have passed, is considered illegal.

Sales under decrees for arrears of rent to be made in future by the collectors of land revenue. Certain parts of sec. 15, reg. 7, 1799, and of cl. 3, sec. 23, reg. 7, 1822, rescinded. Collectors may sell land in satisfaction of summary decrees for rent.

197. And be it enacted, that all sales for the recovery of arrears of rent or revenue held under Clause 7, Section 15, or Clause 6, Section 23, or Section 25, Regulation 7 of 1799, shall be public, and be conducted by the Collector, his deputy or duly authorized assistant, and that ten days' notice shall be given of such sales, by advertisement, to be stuck up at the entcherry of the Zillah court or local adawlut, and that of the Collector.—*Ibid. Sect. 2.*

All sales for arrears of rent or revenue, under cl. 7, sec. 15, or cl. 6, sec. 23, or sec. 25, reg. 7, 1799, to be public, and ten days' notice to be given.

198. Held, that the sale of an under-tenure for balances cannot be upheld in part and reversed in part. The sale was, however, wholly upset on account of the requisitions of Act VIII. of 1835, not having been complied with.—*S. D. A. Sel. Rep. 13th Jan 1844, vol. 7, p. 148.*

The sale of an under-tenure for balances cannot be upheld in part and reversed in part.

199. On the defaulter's tendering the amount decreed against him by a summary judgment his tenure cannot be sold. The Court declined saying whether the zemindar would be entitled to sell, in the event of his proving, by a regular suit, that the talookdar was in arrears at the end of the year.—*Con. 130, 15th July 1813.*

On the defaulter's tendering the amount decreed against him by a summary judgment, his tenure cannot be sold.

200. In reply to your letter of the 9th instant, I am directed by the Court of Sudder dewanny adawlut for the Western Provinces to inform you that in the opinion of the Court, a Judge is not competent to stay the execution of a summary award passed by a Collector, pending the trial of a regular suit instituted in the Civil court, to set aside that award. No provision in the Regulations in force appears to the Court to invest the Judge with this power, and the whole object of the summary process would be evidently defeated, as observed by Mr. Lindsay, if the execution of the award were liable to be stayed until the final adjustment of a regular suit.—*Con. 738, West. C. 16th Nov., Cal. C. 7th Dec. 1832.*

The judge cannot stay execution of the summary award of the collector, pending a civil suit to set aside that award.

201. I am directed to observe that if the Collector has attached the property of the ryot alluded to in your letter No. 92, dated 26th May last, in satisfaction of a summary award of his own court, his jurisdiction in summary suits being quite independent of that of the Judge, and himself, in such cases, in no way subordinate to the authority of that officer, they do not see on what ground the Judge could exercise any interference in the matter; while if the whole estate should have been placed under attachment, or kham management, with a view to the realization of the Government revenue, whether for former years, or the present, and the collections be made direct by the Collector, or his officers, it does not appear to the Court how the Judge could interfere either with the general management of the estate, or with the appropriation to

Idem.

the payment of the Government demand of the rent arising from it.—*Con.* 1165, *West. C.* 20th July, *Cal. C.* 17th Aug. 1838.

*Idem.*

202. Held by the Sudder dewanny adawlut that it is not competent to the lower courts to stay the execution of a summary decree under Regulation 7, 1799, pending the institution of a regular suit to set aside such decree.—*Rep. Sum. Cases*, 28th Nov. 1839, p. 26.

But the civil courts may stay the sale of property in execution of a collector's summary award, on the motion of a third party who has instituted a regular suit to establish his claim.

203. I am desired to communicate to you the opinion of the Court that in cases of the contemplated sale of property in execution of a summary award given by the Collector it is competent to the Civil court, on the motion of a third party claiming the property ordered to be sold, to stay the sale pending the result of a regular suit instituted by such party to establish his claim.—*Con.* 1181, *Cal. and West. C.* 26th Oct. 1838.

Execution of a summary decree for arrears of rent may be taken out within 12 years

204. Held on a reference from the Judge of Hooghly, that, under the existing law, execution of a summary decree for arrears of rent may, be taken out within twelve years from the date of such decree.—*Con.* 1266, *Cal. C.* 9th Aug., *West. C.* 6th Sept. 1839.

It cannot be taken out after 12 years.

205. A suit to enforce execution of a summary decree for rent, instituted upwards of twelve years from the date of the decree, dismissed.—*S. D. A. Sel. Rep.* 18th Jan. 1841, vol. 7, p. 2.

Collectors will execute their own awards, their warrant is a sufficient authority to the civil jailor to receive and discharge a prisoner

206. The Court are of opinion that as Collectors are empowered by Section 20, Regulation 8, 1831, to execute their own awards, their orders for the confinement and release of defaulters need not pass through the civil Judges, and that the warrant of the Collector is a sufficient authority to the civil jailor to receive or discharge a prisoner.—*Civ. Ord. Cal. and West. C.* 4th Jan. 1833.

The collector is competent to release a person confined in execution of a summary decree for rent on proof of insolvency

207. The Court are of opinion that if the prisoner be in confinement in execution of a summary decree, passed by a Collector under Regulation 8, 1831, that officer is competent to release him on his presenting a petition under Section 11, Regulation 2, 1806, and proving his insolvency; the powers heretofore vested in the Judge in such cases having been virtually transferred to the Collector by the provisions of the Regulation first quoted.—*Con.* 784, *Cal. C.* 19th April, *West. C.* 17th May 1833.

## SECTION XX.

*Summary Suits for Arrears and Exactions of Rent—Institution of a Regular Suit to contest a Summary Decision.*

*Vide Regulation 8, 1831, Section 4, given as Rule 126 of this Chapter.*

A regular suit may notwithstanding be preferred in the Zillah or City court.

208. Any person who may be dissatisfied with the summary judgment of a Collector passed under this Regulation, and may be desirous of a more full and formal investigation of the merits of the case, shall be at liberty to prefer a regular suit in the local Zillah or City court, and on the institution of such suit the proceedings held on the summary enquiry shall be filed on the record of the regular suit.—*Reg.* 14, 1824,  *Sect.* 10.

Regular suits to contest the summary awards of the collector shall be in the nature of a regular ap-

209. Provided also, that the regular suits which may be brought to contest decisions passed by Collectors, under the powers vested in them by Sections 11, 12, 14, 15, 16, 17, 18, 19 and 20, shall be of the nature of an appeal to the court in its regular jurisdiction

from a summary award. It shall not therefore be necessary for the Collector or other officer of Government to be a party in the action.—*Reg. 7, 1822, Sect. 23, Cl. 2.*

*peal to the courts. The collector need not be a party to the suit.*

210. Persons confined under the fifth clause of the preceding section [Clause 5, Section 15,] and desirous of bringing the demand upon them to a regular judicial investigation and decision in the Dewanny adawlut, are at liberty to institute a suit against a landholder or farmer, at whose instance they may have been confined, for this purpose; and should the amount denied by them be found upon trial not to have been due, they shall receive a judgment for full costs and damages against the party by whom it may have been claimed. They shall also be entitled to a similar judgment, with interest at the rate of one per cent. per mensem, upon the amount paid by them, and found not to have been justly due from them, if they shall discharge the demand upon them with a view to obtain their release from arrest, or from subsequent confinement, under the preceding section, and shall afterwards, on a suit in the Dewanny adawlut for recovery of the amount so paid, establish that it was not due from them at the time of the demand.—*Reg. 7, 1799, Sect. 16*

*Persons confined under the fifth clause of preceding section, may institute a suit in the dewanny adawlut.*

*Judgment to be passed if the arrear denied by them be found not due.*

*Or if the demand be discharged by them and afterwards found not due.*

211. Proprietors and farmers of land, whose claims to arrears of rent may be rejected by the Zillah Judge, [*now the Collector*] on the summary enquiry directed in Section 15 of this Regulation, are also at liberty to institute a regular suit in the Dewanny adawlut for the recovery thereof, and if, on trial, the amount claimed by them shall be found to have been due when the summary judgment was given against them in the first instance, they shall be entitled to receive back any sums paid by them for costs or damages under such judgment, and to a decree from the Zillah court for the arrears of rent due to them, with interest at the rate of one per cent. per mensem, and full costs incurred by them as well on the summary enquiry, as on the regular suit.—*Ibid, Sect. 17.*

*Claims rejected on the summary enquiry may be also sued for in the dewanny adawlut.*

*Judgment to be given if such claims be established on the regular suit.*

212. The existing Regulations not providing any limited period beyond which the investigation of a regular suit to contest the justice of a summary award, in matters connected with arrears or exactions of rent, shall be admitted, it is hereby declared, that the admission of regular suits to contest the summary awards of the revenue authorities in such matters, shall be restricted to the period of one year from the date of the delivery, or of the tender to the party against whom the award is made, of the Collector's decision.—*Reg. 8, 1831, Sect. 6.*

*Admission of regular suits to contest summary awards of revenue authorities, restricted to one year from date of collector's decision.*

213. The provisions of Section 6, Regulation 8, 1831, are held to be applicable to the summary decrees of the judicial authorities passed prior to the enactment of that law, that is, all regular suits to contest the summary awards of the judicial authorities should have been instituted within one year of the promulgation of that Regulation.—*Con. 1303, Cal. C. 16th July, West. C. 6th Aug. 1841.*

*Regular suits to contest the summary awards for rent passed prior to reg. 8, 1831, must be instituted within one year after the promulgation of that regulation.*

214. The Courts are of opinion, that the period of one year, to which the admission of regular suits to set aside the awards of the revenue authorities is restricted by Section 6, Regulation 8, 1831, should be calculated according to the principle laid down in Clauses 10 and 11, Section 8, Regulation 26, 1814.—*Con. 1028, Cal. C. 29th July, West. C. 19th Aug. 1836.*

*The period of one year for the institution of a regular suit to contest these summary awards must be calculated according to the rules laid down in cl 10 and 11, sec. 8, reg. 26, 1814.*

215. An order of nonsuit having been passed in an action, brought within time, for re-

*An order of non-*

suit having passed in such an action, the period during which it was pending will not be included in the year prescribed in sec. 6, if another suit be instituted.

Regular suits instituted to set aside summary awards of collectors for land rent declared cognizable by P. S. A., S. A. or M.

On appeal to a court against the decision of a collector, the proceedings held by that officer shall be called for and filed in the case.

Mode in which the value of a suit to obtain the reversal of the summary award of the collector is to be estimated.

If a suit instituted originally at one-fourth stamp under sec. 8, reg. 8, 1831, be appealed, the full amount of stamp is to be levied

versal of a summary award of the revenue authorities under Regulation 8, 1831, held that the period during which such action was pending is not to be included within the limitation of one year prescribed by Section 6 of that Regulation, in the event of the institution of another suit.—*S. D. A. Sel. Rep.* 25th Nov. 1846, vol. 7, p. 281.

216. In modification of Section 19, Regulation 8, 1831, regular suits instituted to set aside the summary judgments of Collectors for land rent are declared cognizable, according to their amount, by the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs.—*Reg.* 7, 1832, Sect. 10.

217. Whenever a regular suit may be instituted in a Civil court, with a view to set aside or alter a summary judgment passed by a Collector, the proceedings held on the summary enquiry shall be called for by precept from the Court, and filed on the record of the case.—*Reg.* 7, 1822, Sect. 31, Cl. 1.

218. In the event of a suit being instituted in the Zillah court or that of a Moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a Collector adjudging a balance against him and ejecting him from his jote as a defaulter, is the value of the suit to be estimated by the amount of rent in dispute, or by the selling value of the land or both? The claim is to disprove the balance and regain possession; but as the point originally at issue in the summary suit was the justness or otherwise of the demand of rent, and the ejectment or non-ejectment of the cultivator rested solely on the defendant being deemed a defaulter or otherwise, I conceive that the amount of the suit should be estimated by the amount of balance in litigation.—*Reply of the Sudder.*—I am directed to inform you, that in suits of the nature described in the 2d paragraph of your communication, viz. suits instituted in a Zillah court or that of a Moonsiff by a resident cultivator, to obtain a reversal of a summary decision passed by a Collector adjudging a balance against him and ejecting him as a defaulter, the value of the suit should be estimated at the amount of rent in dispute, or, in other terms, at the sum sued for in the first instance.—*Con.* 862, *West. C.* 7th, *Cal. C.* 28th Feb. 1834.

219. As doubts have been entertained with regard to the amount of stamp leviable in appeals from decisions passed in cases originally instituted on stamped paper of one-fourth the usual value, under the provisions of Section 8, Regulation 8, 1831; I am directed by the Court to state for your information, that in such appeal the full amount of stamp is to be levied, the provisions of the section above mentioned extending only to the original suit.—*Cir. Ord. Cal.* and *West. C.* 12th Dec. 1834.

## SECTION XXI.

### *Summary Suits for Arrears and Exactions of Rent—Process against Defaulting Under-Tenants and their Sureties in another Jurisdiction.*

Petitions for the arrest of defaulting under-tenants & their sureties may be presented to the Judge of the zillah or city in which the defaulter shall at the time reside.

220. It is therefore hereby provided, that whenever a dependant talookdar, kutkenadar, jotedar, or other under-tenant, or the surety of any such under-tenant, from whom an arrear of rent may be due, and who may have failed to discharge the same on demand, may reside, or be in a zillah or city different from that wherein the land, for which the arrear of rent is due, may be situated, it shall be competent to the zemindar,

or other proprietor or farmer of the land, to whom the arrear of rent may be owing, or his authorized agent, to present a petition specifying the particulars stated in the following clause, and praying for the arrest of the defaulter, or his surety, to the Judge of the zillah or city in which the defaulter or his surety may reside, or be; and the Judge receiving the same shall immediately issue the process of arrest, directed in the third clause of Section 15, Regulation 7, 1799; and the corresponding clause of Section 14, Regulation 5, 1800, and Section 32, Regulation 28, 1803.—*Reg. 19, 1817, Sect. 15, Cl. 1.*

Who immediately to issue the prescribed process of arrest.

221. The petition of arrest, to be presented under the above clause, as well as any petitions for the arrest of defaulting under-tenants or their sureties, which may be hereafter presented under the Regulations above mentioned, shall specify, besides the name and residence of the defaulter and surety, and the mehal for which the balance of rent is claimed, the annual jumma of such mehal; the amount demandable for the kists of the current year which may have become payable, the amount received from the tenant or his surety, and the balance actually due for the payment of which the arrest is desired. The petition shall also state whether the arrear claimed has been demanded from the defaulter or his surety and the result.—*Ibid, Cl. 2.*

What such petition is to contain.

222. If the defaulter, or surety, against whom process of arrest may be issued under the first clause of this section, be found within the jurisdiction of the Judge by whom the same shall have been issued; and after being arrested, he shall not pay the arrear demanded, or satisfy the party causing his arrest; and shall, in consequence be brought to the local Civil court, in pursuance of the rule contained in the Regulations before noticed; the Judge shall call upon him to shew cause why he should not be sent to the Judge of the zillah or city, in which the land, for which the arrear is claimed (or the greater part of it, if in two jurisdictions) may be situated; and if sufficient cause be not assigned, or substantial security given for attending the Judge of the jurisdiction in which the land is situated, within a limited period, the party arrested shall be sent in custody of mohussil peons (at the charge of the party claiming the arrear) to the Judge of the zillah or city, in which the land may be situated. A statement of the case with the original petition of arrest, and all other papers connected with it, shall at the same time be transmitted for the information of the Judge, to whom the party in arrest may be sent in such cases. The petition of arrest, and all papers connected with it, shall likewise be sent to the Judge of the zillah or city in which the land may be situated, whenever the party arrested may assign sufficient cause for not being sent as directed: or may give security for his attendance, which shall be accepted whenever substantial security may be offered.

How the judge is to proceed in case a defaulter after such arrest shall not satisfy the party aggrieved.

Or shall not furnish security for his appearance before the judge of the zillah or city in which the land is situated.

What documents are to accompany the defaulter on such occasions.

In cases where security is furnished, the petition of arrest and papers connected with it only to be forwarded.

—*Ibid, Cl. 3*

223. When a defaulting tenant, or his surety, may be brought to the court of the zillah or city in which the land is situated, or may attend under security for his appearance, in pursuance of the foregoing clause, the Judge shall proceed, as directed in similar cases, by the Regulations in force, when the defaulter or surety may have been arrested within his own jurisdiction.—*Ibid, Cl. 4.*

Judge of the zillah or city where the land is situated will then proceed against a defaulter as directed by the regulations.

## SECTION XXII.

*Summary Suits for Arrears and Exactions of Rent—Reference of Suits regarding the same Cause of Action to the same Tribunal.*

Rules to be observed in cases of two or more suits being instituted regarding the same matter, cognizable under this regulation.

224. Inconvenience having been experienced from the circumstance of two or more claims regarding the same matter having been preferred to different tribunals, it is hereby provided that if it should be brought to the notice of the Judge, that a suit regarding any matter cognizable under this Regulation is pending in his or in any of the courts subject to his control in a matter regarding which a suit had been previously instituted before the Collector, the Judge shall direct such suit to be transferred to the Collector, who in such case is authorized and required to decide both suits.—*Reg. 8, 1831, Sect. 14.*

Explanation of the term "regarding the same matter" in the above section.

225. The term in Section 14, "regarding the same matter," is to be considered as meaning that the cause of action in both suits is identical. The applicability of the rule can only be made by the Judge or other officer acquainted with the details of each case.—*Con. 1001, Cal. C. 12th Feb., West. C. 4th March 1836.*

Collector, on ascertaining that in any matter pending before him under this regulation a regular suit has been previously filed before the Judge, will suspend his proceedings and forward the record to the Judge.

226. In like manner, if it be brought to the notice of the Collector, that a suit is pending before him in a matter regarding which a regular suit has been previously filed in the Judge's court, he shall suspend his proceedings and forward the record of the case to the Judge, who will make over both cases to some tribunal subject to his authority, or dispose of the cases himself.—*Reg. 8, 1831, Sect. 15.*

The courts of S. D. A. are not included in the rules contained in sec. 14 and 15, reg. 8, 1831, which refer only to the Zillah and city courts, and the courts subordinate to them.

227. Held on a reference from the Judge of Jessore, that the Courts of Sudder dewanny adawlut are not included in the rule contained in Sections 14 and 15 of Regulation 8, 1831, which refer exclusively to the Zillah and City courts and to the courts subordinate to them.—*Con. 1252, Cal. C. 27th Sept., West. C. 31st Oct. 1839.*

Suits transferred under sec. 15, as above, must be considered regular suits.

228. Suits for rent transferred by the Collector to the subordinate judicial tribunals under Section 15, Regulation 8, 1831, must be entered and tried as regular suits.—*Con. 951, West. C. 8th, Cal. C. 22d May 1835.*

Manner in which the Judge will proceed, if the collector refuse to transfer the records of a case under sec. 15, as above.

229. If the Collector, on being required by the Judge, under Section 15, Regulation 8, 1831, to transfer the record of a case pending before him, refuse to do so, the Judge is competent to proceed according to Section 36, Regulation 14, 1793.—*Con. 1094, Cal. C. 23d June, West. C. 14th Aug. 1837.*

Case in which the S. D. A. permitted a plaintiff to file a supplementary plaint as an application to set aside the summary decree.

230. An action having been brought to set aside a kubooliyut or counterpart engagement of a lease, by a party, against whom a summary suit had been previously preferred before the Collector for arrears of rent under the same engagement, and in which a decree was given in favor of the summary plaintiff subsequently to the institution of the regular suit to contest the kubooliyut, the Sudder dewanny adawlut permitted the plaintiff in the regular suit to file a supplementary plaint as an application to set aside the summary decree, as well as the kubooliyut, the cancelling of which formed the subject of his original plaint.—*S. D. A. Sel. Rep. 30th March 1841, vol. 7, p. 21.*

231. It shall further be the duty of the Judge and of all the judicial authorities, subject to his control, in all practicable cases, to refer suits concerning the same cause of action and regarding any matter cognizable under this Regulation to be decided by one and the same tribunal, and the subordinate judicial authorities are required to suspend their proceedings and to submit them to the Judge, whenever they may have reason to know that another case concerning the same matter, relating to arrears or exactions of rent, is pending before another court, or as a summary suit before the Collectors.—*Reg. 8, 1831, Sect. 16.*

All judicial authorities to endeavour to bring before one court all cases relating to the same matter cognizable under this regulation.

232. Provided moreover, that in all cases of appeal, the records of cases which can be ascertained to have been decided, concerning the same cause of action and regarding any matter cognizable under this Regulation, shall be produced and read, and that the decision in appeal shall be considered to be equally applicable to all such suits, though not appealed. Provided however, that in all such cases due notice shall be given to the parties concerned, to attend either in person or by vakeel to prosecute or defend their several interests.—*Ibid, Sect. 17.*

In cases of appeal, the records of all cases in the same matter to be produced, and read, and the decision in appeal to apply equally to all.

Proviso.

233. I am directed to state that cases made over by the Collector under Regulation 8, 1831, must be numbered separately, and each decided as a distinct suit, though both decisions may be simultaneous.—*Con 1001, Cal. C. 12th Feb, West. C. 4th March 1836, par. 2.*

Cases made over by the collector under the above regulation must be numbered separately.

### SECTION XXIII.

#### *Summary Suits for Arrears and Exactions of Rent—Right of Landholders to attach Tenures for Arrears of Rent after having instituted a Summary Suit.*

234. When an under-farmer, jotedar, or other under-tenant, arrested as above described, shall not immediately discharge the arrear demanded from him, and shall in consequence be taken in custody to the Judge of the Dewanny adawlat, the proprietor or farmer of land, to whom such arrear may be owing, is at liberty to attach the farm, jote, or other tenure of such defaulter, and to manage the same by his own agents, or in such manner as he may think proper, until the rent due to him, with the further rent that may become due after the attachment, and interest upon the whole arrear at the rate of one per cent. per mensem, shall have been liquidated from the produce. But in such cases of attachment, the proprietor or farmer making the same shall not exact more from the cultivators of the soil, and other descriptions of inferior tenantry, whose rents for the current year may have been payable to the defaulter, than the defaulter himself would have been entitled to receive from them if the attachment had not taken place. (cases of collusion and illegality under the Regulations excepted :) and in the event of the defaulter making good the arrear due from him, with interest at the rate of one per cent. per mensem, at any time within the current year, the attachment shall be immediately withdrawn, and a full and fair account rendered to him of all receipts and disbursements during the continuance of it.—*Reg. 7, 1799, Sect. 15, Cl. 6.*

In what cases proprietors and farmers of land may attach the farm, jote, or other tenure of their defaulting tenants, & collect therefrom the arrears of rent due to them with interest.

Restriction against undue exactions from the cultivators of the soil and other inferior tenantry in such cases

Attachment to be withdrawn on payment of the arrear due with interest at any time within the current year. And a fair account rendered of all receipts and disbursements



Doubts in the construction of sec. 15, reg. 7, 1799, stated.

235. Doubts have been entertained with respect to the intent and meaning of such part of Section 15, Regulation 7, 1799, as regards the power of attaching the lands of a defaulter, particularly whether the attachment can be made in case the dustuk be not served on the person of the under-tenant from whom the arrear of rent is claimed: moreover it has not been provided in any part of the rules above quoted, nor in any subsequent Regulation, whether or not a decree can be passed after summary investigation of an arrear claimed, in case the process by dustuk shall not have been served on the defaulter. In consequence of these doubts and omissions, under-tenants falling in arrear have been encouraged to make it a practice to evade the process by dustuk, in the confidence that if successful in concealing themselves for a time, the person to whom the rent is due will lose the benefit of his summary application, and be referred to a regular suit as the only means of recovering his dues, or of obtaining such a judicial award as will enable him to proceed against the property of the debtor. In order to remedy the evils arising from the practice above described, the following rules have been enacted, in explanation and modification of the rules of Section 15, Regulation 7, 1799.—*Reg. 8, 1819, Sect. 18, Cl. 1.*

And their effects.

Proceedings after a summary suit has been lodged.

236. Under the existing rules proprietors, talookdars or farmers, are entitled, with or without making a previous demand upon the under-tenant, to institute a summary suit for any arrear which may be claimed to be due, and to obtain the issue of a process of arrest against the defaulter. It is hereby further provided, that when a summary suit for arrears alleged to be due, may have been instituted against a talookdar or against a farmer, or against the holder of any other intermediate tenure between the zemindar and the actual cultivators, it shall be competent to the party who may have instituted such suit (whether the alleged defaulter shall have been arrested or not,) to send a *sezawul* of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, provided however, that such power of attachment shall not be exercised, unless the arrear of rent claimed in the summary suit shall have been actually due for one entire month before the date of attachment, and shall not be less in amount than the entire *kist* of the month, on account of which the arrear may be claimed.—*Ibid.* Cl. 2.

The right of attaching talooks, farms & similar tenures declared.  
With proviso.

A zemindar cannot send a *sezawul* of his own authority to attach and collect the rents of actual cultivators immediately from themselves, without having instituted a suit under sec. 15, reg. 7, 1799.

237. I am desired to communicate to you the opinion of the Court, that a zemindar is not competent, under the provisions of Section 18, Regulation 8, 1819, to send a *sezawul* of his own authority to attach and collect the rents of the actual cultivators immediately from themselves, without having previously instituted a summary suit under Section 15, Regulation 7, 1799, against the talookdar or other intermediate holder between himself and the actual cultivators.—*Con. 436, 17th Aug. 1827, par. 2.*

SECTION XXIV.

*Summary Suits for Arrears and Exactions of Rent—Right of Landholders to cancel the Leases of intermediate Tenants, and to oust them, at the end of the year of default.*

238. If the arrear be not liquidated within the current Bengal, Fussely, or Willaity year (according as the place may be situated in the province of Bengal, Behar, or Orissa), either by the payments of the defaulter or his surety, or by the attachment of his tenure, the zemindar or other proprietor of the land, or the farmer in whose farm the defaulter's tenure may be included, (if such farmer's lease extend beyond the current year,) is at liberty, at the commencement of the ensuing year, to make such provision for the future receipt of the rents payable to him from the land tenanted by the defaulter, as he may judge proper and may be consistent with the rights of all other persons concerned. If the defaulter be an under-farmer for the past year only, or whose lease may have expired with the past year, he can, of course, have no claim to any further lease; and although his lease may not have expired, if he shall have neglected to fulfil the conditions of it by the payment of his stipulated rent, it must be considered liable to be annulled, or otherwise at the option of the lessor if the defaulter be a dependant talookdar or the holder of any other tenure, which by the title deeds or established usage of the country is transferrable by sale or otherwise, it may be brought to sale, by application to the Dewanny adawlut, in satisfaction of the arrear of rent; and the purchaser will become the tenant for the new year: or if defaulter be a leaseholder or other tenant, having a right of occupancy only so long as a certain rent, or a rent determinable on certain principles according to local rates and usages, be paid; without any right of property or transferable possession, the proprietor of whom such tenure is held, or the farmer or other person to whom such proprietor may have leased or committed his rights, must be understood to have the right of ousting the defaulting tenant from the tenure he has forfeited by a breach of the conditions of it. In such cases (viz. in the several cases enumerated in this clause, under the stated exception when a sale of landed property may be desired,) proprietors and farmers of land are at liberty to exercise the just powers appertaining to them, without any previous application to the Courts of justice; but they will be held responsible for all acts done by them, or by their agents, which may exceed their just powers, and infringe the rights of under-tenants of whatever description, whether founded on pottahs or other written deeds and engagements; or on long prescription and established local usage. This Regulation is not meant to define or limit the actual rights of any description of landholders or tenants; which can be properly ascertained and determined by judicial investigation only; but merely to point out in what manner defaulting tenants may be proceeded against in the event of their not paying the rents justly due from them; leaving them to recover their rights if infringed, with full costs and damages, in the established Courts of justice, under the provisions already stated in this Regulation for bringing such causes to a determination with the least possible delay.—Reg. 7, 1799, Sect. 15, Cl. 7.

What further measures may be taken by the landholders or farmers for the security of their future rents if the arrears due to them be not liquidated within the current year.

Defaulting under-farmers whose leases may have expired can have no claim to any further lease. And although their leases may not have expired neglect to pay the stipulated rent subjects the farms of this description of defaulters to be annulled at the option of the lessor.

If the defaulter be a dependant talookdar or the holder of any other transferable tenure, it may be brought to sale for the arrear by application to the dewanny adawlut. Or if the defaulting tenant have a right of occupancy only depending on the payment of a certain rent, he may be removed from the tenure he has forfeited by a breach of the condition of it.

Proprietors & farmers of land at liberty to exercise their just powers in the cases herein stated without previous application to the courts of justice.

But will be held responsible for all acts done by them or their agents beyond their just powers, infringing the rights of their under-tenants of whatever description.

This regulation not intended to define or limit the rights of any description of landholders or tenants; but merely to point out in what manner defaulting tenants may be proceeded against, leaving them to recover their rights if infringed, with costs and damages, in the courts of justice.

A judgment passed by the zillah court, in favor of a farmer for possession of lands for which two under-renters were in balance at the end of the year, confirmed by the S. D. A.

239. On demand by a farmer on two under-renters, for possession of lands for which they were in balance at the end of the first year of a lease which had been granted to them, and refused to give up, summary judgment for the farmer, by the zillah court, under Regulation 7, 1799, confirmed by the Sudder dewanny adawlut.—*S. D. A. Sel. Rep. 3d Aug. 1807, vol. 1, p. 206.*

A defaulting farmer is liable to be ousted from his farm, at the end of the year, in which he was in arrear, if he do not discharge it on demand.

240. In reply to a reference to the Sudder dewanny adawlut, the Judge of zillah Purnea was informed on 17th September, 1808, that under the provisions of Section 15, Regulation 7, 1799, as well as upon general principles of justice, a defaulting farmer is liable to be ousted from his farm at the end of the year for which an arrear of rent may be due from him, if he shall not discharge the same on demand, and that the Court were further of opinion, that the proprietor of the land is authorized to oust his defaulting tenant, without application to the Courts of justice, as declared by clause seventh, Section 15, Regulation 7, 1799, provided no violence be used, so as to bring the case within the provisions of Regulation 49, 1793, [*now Act IV. 1840*].—*Con. 42, 17th Sept. 1808.*

If on the zemindar's alleging his tenant to be in arrear, the tenant deny the facts, the courts cannot cause the tenant to be removed, and the tenure to be surrendered to the zemindar without an investigation of the latter's claim. The zemindar must have recourse to the legal remedy of distraint, summary suit or regular action.

241. The Court remark, that the orders of the late Judge, Mr. Cornish, on the case appear to have proceeded upon a construction of the seventh clause of Section 15, Regulation 7, 1799, according to which if a landholder, alleging his tenant to be in arrear, think fit to take upon himself to attach his tenure, the tenant is bound to give up his possession; and should the tenant deny that he is in arrear, and refuse to quit, the Courts of justice are obliged upon application from the landholder, to cause the tenant to be removed, and the tenure given up to the landholder, without any previous investigation into the justice of the landholder's claim. The Court cannot acquiesce in this construction of the clause in question, which, they observe, merely declares that a landholder may oust his defaulting tenant without application to the Courts of justice; and leaves entirely open the question, what course is to be pursued if the tenant shall deny that he is a defaulter, and incur the responsibility of refusing to quit his tenure. That question is to be resolved independently of the clause under consideration, and the Court are clearly of opinion, that under the circumstances supposed, the landholder must have recourse to his legal remedies of distraint, summary suit, or regular action. The Court, indeed, regard the clause quoted, so far as it is applicable to such cases, to be merely declaratory of the right possessed by landholders, in common with all other claimants, to pursue their just demands by peaceable means; and to have been intended, not to confer any powers on landholders in addition to those which they previously possessed upon general principles, and by the usage of the country; but to give confidence to landholders in the lawful pursuit of their just claims, and to discourage undue opposition on the part of the tenants: by satisfying the former, that they would be in no danger of being treated as wrong-doers, in consequence of the just and peaceable exercise of their powers; and making the latter sensible, that in resisting rightful claims until prosecuted in the Courts of justice, they would render themselves liable to costs and damages.—*Con. 113, 12th Nov. 1812, par. 2.*

When a summary decree for rent is not satisfied by the defaulter, or his security, it may be enforced at the end of the year, by the sale of the defaulter's talook,

242. I am directed by the Sudder dewanny adawlut, to acknowledge the receipt of a letter from you, dated the 22d ultimo, with its enclosures, and to acquaint you that judgments for arrears of rent, passed under the fifth clause of Section 15, Regulation 7, 1799, and not satisfied within the current Bengal, Fussely, or Willaity year, by the confinement of the defaulting tenant and security under that section or by the attachment of the defaulter's tenure.

as authorized by the sixth clause of the above section, may, under the seventh clause of the same section be enforced on application to the Dewanny adawlut, as therein directed, at the expiration of the Bengal, Fussely, or Willaity year for which the arrear may have been adjudged, by the sale of the defendant's talook or other transferable tenure of the defaulter, for the rent of which such judgment may have been passed. But that you were not warranted in applying to the Board of Revenue to cause the sale of the tenure upon the mere allegation of a balance being due, without any enquiry.—*Con. 128, 8th July 1813.*

or other tenure, for the rent of which the decree was passed.

But the tenure cannot be sold on the mere allegation of a balance without enquiry.

243. When an arrear may be adjudged to be due in the manner above provided, [Clauses 1, 2, 3, Section 18, Regulation 8, 1819,] the zemindar or other plaintiff in the suit shall be at liberty to cancel of his own authority any lease, farm or other limited interest intermediate between himself and the actual cultivator, on account of which the rent may have been claimed; but no summary award for arrears shall be considered to warrant the subjecting real property belonging to the defendant, in such an action, to sale in execution, except in cases in which the balance may be due on account of a talook of the description noticed in Section 3 of this Regulation, or of any other talook which may have been declared by the Regulations to be liable to sale for arrears; such talook will of course be liable to be sold for the arrears which may have accrued upon it, in the mode prescribed; but if the zemindar or other plaintiff should be desirous of having any other estate, or house, or landed property of a defaulter brought to sale in satisfaction of his claim of rent, it will be necessary for him to institute a regular suit for the purpose, notwithstanding the existence of the summary award in his favour.—*Reg. 8 1819, Sect. 18, Cl. 4.*

After summary decree zemindar may cancel farms and the like.

No exception against separate real property.

## SECTION XXV.

*Suits for Arrears and Executions of Rent—Rights of Khoodkhist or Resident Cultivators; and Remedy of the Zemindar against them for Arrears.*

244. The provisions contained in the second and fourth clauses of this section, [Rules 236 and 243] so far as they relate to the power of attaching and cancelling (under the circumstances therein described) the leases, farms or other limited interests of persons holding intermediately between the proprietor and the actual cultivator, are hereby declared not to extend to khoodkhist ryots or other resident cultivators of the soil.—*Reg. 8, 1819, Sect. 18, Cl. 5.*

Tenures of ryots not to be attached or cancelled for arrears.

245. For any arrears which may be alleged to be due from those classes of persons, the party claiming them may proceed at any time during the year by distraint or by process of arrest and summary suit, under the existing rules; proprietors, talookdars or farmers, however, to whom an arrear of rent may be due at the end of the year from any khoodkhist ryot or other resident cultivators of the soil, are at liberty to institute a summary suit to establish the existence of such an arrear, taking out process of arrest in the usual form. If the defendant shall not attend or cannot be arrested, the forms of process and proceeding prescribed in the third clause of this section, shall be considered to

Except by summary suit at the end of the year.

be applicable to the case, and any summary judgment previously obtained on account of rent of the year just closed, shall be received as evidence of such arrear, upon the plaintiff's shewing that the judgment in question has remained unexecuted. If an arrear shall be adjudged by the court to be due, and the amount shall not be immediately paid into court, the plaintiff shall be authorized by the court to make such new arrangement as he may judge proper for the future management of the lands in question.—*Reg. 8, 1819, Sect. 18, Cl. 5.*

**Khloodkhasht ryots have the liberty of immediately paying into court any sum adjudged to be due from them, before they can be ejected**

246. The Sudder Court remark that under the provisions of Clauses 4 and 5, Section 18, Regulation 8 of 1819, the landholder must first establish by a suit, either summary or regular, the existence of an arrear before he is at liberty to cancel the lease of an under-tenant, while as regards khloodkhasht ryots, they have also the power of immediately paying into court any sum adjudged to be due from them before they can be ejected.—*Con. 1205, West. C. 15th March, Cal. C. 12th April 1839, par. 2*

**When a khloodkhasht ryot is ejected, contrary to the legal, the Judge, on his summary application will order him to be restored to possession & to retain it till the process ordered by the regulation has been complied with**

247. With reference to the principal question which has given rise to the present correspondence, viz. the power of redressing complaints of unjust ejectment; the Court observe that the following construction was adopted by the Court of Sudder dewanny adawlat at the Presidency, and circulated for the guidance of the several judicial authorities on the 28th August, 1829. "The declaration contained in the fifth clause of Section 18, Regulation 8, 1819. (that it is illegal to oust or disturb resident cultivators *unless* certain stated circumstances,) necessarily implies a remedy in case of a contravention of this rule, and in the spirit of the enactment cited, such remedy should be afforded by the Judge on the summary application of the ejected *ryot*, by an order for his being restored to possession, and his retaining it until the process prescribed by the Regulation shall have been observed." The jurisdiction formerly exercised by the Judge with regard to the suits in question having by Regulation 8, 1831, been transferred to the Collector, the Court are of opinion that the authority to redress complaints of illegal ejectment which the above Circular orders declared to be vested in the Judge, must be now considered to rest with the revenue functionary, provided the ejectment be not attended with violence, so as to bring the case within the cognizance of the Magistrate.—*Cir. Ord. Cal. and West. C. 15th Nov. 1833.*

**The authority to redress complaints of illegal ejectment is now vested in the collector**

**Mode in which the value of such a suit is to be estimated**

248. I am directed to inform you that in suits of the nature described in the 2d paragraph of your communication, viz. suits instituted in a Zillah court or that of a Moonsiff by a resident cultivator, to obtain a reversal of a summary decree passed by a Collector adjudging a balance against him and ejecting him as a trespasser, the value of the suit should be estimated at the amount of rent in dispute, or, in other terms, at the sum sued for in the first instance.—*Con. 462, West. C. 7th Cal. C. 28th Feb. 1834.*

**All questions as to whether the zemindar can oust a ryot should come under the provisions of act 4, 1810, and reg. 8, 1819**

249. The Court are of opinion, that all differences between landholders and their tenants or ryots, involving the question whether the landholder can legally oust the tenant or ryots from the lands which the latter considers himself entitled to occupy, should come under the provisions of Regulation 49, 1793, or Regulation 8, 1819.—*Con. 482, 9th May 1828.*

*Regulation 49, 1793, has been rescinded by Act IV. 1840, which will be found in the Appendix. The above rule (249) refers only to the summary adjustment of such disputes, and does not bar a regular action*

## SECTION XXVI.

### *Summary Suits for Arrears and Exactions of Rent—General Rules regarding the Rights of Landholders.*

250. In like manner, in all other instances, the Courts of justice will determine the rights of every description of landholder and tenant, when regularly brought before them; whether the same be ascertainable by written engagements, or defined by the laws and regulations; or depend upon general or local usage, which may be proved to have existed from time immemorial; but it is hereby declared that no part of the existing Regulations was meant to deprive the zemindars and other landholders of the power of summoning, and if necessary, compelling the attendance of their tenants for the adjustment of their rent; or for any other just purpose, or of measuring any land within their respective estates which may be liable to measurement under the conditions upon which such land may have been leased or held. For the just exercise of such rights and powers the landholders are not required to make any previous application to the Courts of justice; and any person opposing them therein will, on proof in the Dewanny adawlut, be liable to full damages and all costs; besides being subject, for any breach of the peace, to prosecution and punishment in the Criminal courts. But the landholders, their agents and representatives, will be held answerable for any abuse, or unjust exercise of the powers hereby declared to be vested in them, and on proof thereof by the party aggrieved, in the Dewanny adawlut, will be liable to full costs and damages, besides a fine to Government if the case shall appear to deserve it.—*Reg. 7, 1799, Sect. 15, Cl. 8.*

The courts of justice in all other instances to determine the rights of every description of landholder & tenant when regularly brought before them.

Explanation that no part of the existing regulations was meant to deprive the landholders of the power of causing the attendance of their tenants for the adjustment of their rent, or for any other just purpose, or of measuring any land liable to measurement under the conditions on which it may be tenanted.

Penalty for any opposition to the landholders in the just exercise of these rights.

Also for any abuse or unjust exercise of the above powers by the landholders, their agents or representatives.

The S. D. A. declined defining the extent of power of "compelling the attendance of ryots" given to the zemindars, as above.

251. The Sudder dewanny adawlut declined defining the extent of power of "compelling the attendance of ryots," conferred on zemindars under Section 15, Regulation 7, 1799, and observed that on a complaint being preferred to the Magistrate, it would be for him to decide whether any unnecessary or unauthorized degree of severity had been resorted to.—*Con. 382, 22d April 1825.*

252. In an action for damages instituted under Clause 8, Section 15, Regulation 7, 1799, by a landholder against tenants resisting measurement of lands, the plaintiff may convert the rent to which he is entitled into damages and obtain judgment on proof.—*S. D. A. Sel. Rep. 13th June 1846, vol. 7, p. 263.*

The course which a zemindar may pursue in an action for damages under Cl. 8, sec. 15, reg. 7, 1799.

## SECTION XXVII

### *Summary Process against Agents for Money or Papers.*

253. The provisions in Section 15, as far as they can be applied, are likewise declared to extend to the sudder and mofussil amlah, or Native agents of every description, employed by the landholders and farmers in the management of their estates or farms, or collection of their rents. Any landholder or farmer having demands upon such agents whilst in his service, or immediately after their resignation or dismissal from his service, whether for money in their hands, or for accounts which they may refuse to render, or for

Provisions in sec. 15, as far as applicable, extended to the agents of landholders and farmers whilst in their service or immediately after their resignation or dismissal.

any matter relating to the discharge of their respective trusts whilst in his employ, may proceed against them for their arrest and confinement in like manner as by Section 15 of this Regulation, he is authorized to proceed against defaulting under-tenants; and the Zillah and City courts and Native Commissioners are to take the same measures for the aid of the landholders and farmers in such cases, as they are directed to take for the recovery of arrears from defaulting tenants.—*Reg. 7, 1799, Sect. 20.*

Limitation in above clause extended to applications for summary process by landholders and farmers, against their agents, under existing regulations.

254. The rule of limitation prescribed by the above clause is also hereby extended to applications for summary process by landholders and farmers, against their agents employed in the management of their estates and farms, or in the collection of their rents, under the provisions made by Section 20, Regulation 7, 1799; Section 19, Regulation 5, 1800, and Section 37, Regulation 28, 1803, which authorize such process for the arrest and imprisonment of the agents of landholders and farmers, whilst in their service, or immediately after the resignation or dismissal of agents of the above description, on account of demands for money in their hands, or for accounts which they may refuse to render, or for any matter relating to the discharge of their respective trusts.—*Reg. 2, 1805, Sect. 1, Cl 2.*

## SECTION XXVIII.

*Summary Suits regarding Indigo—Remedy against the Ryots disposing of the Produce contrary to his Engagement.*

Under what circumstances persons making advances for the cultivation of the indigo plant, on defined portions of land, shall be held to have a lien or interest in the produce of such land

255. If any person shall have given advances to a ryot or other cultivator of the soil under a written engagement, stipulating for the cultivation of indigo plant on a portion of land of certain defined limits, and for the delivery of the produce to himself, or at a specified factory or place, such person shall be considered to have a lien or interest in the indigo plant produced on such land, and shall be entitled to avail himself of the process hereinafter provided, for the protection of his interests, and for the due execution of the conditions of the contract.—*Reg. 6, 1823, Sect. 2.*

Mode of procedure when a ryot, asserting himself to be under engagements to an indigo planter, complains that another planter, on the plea of having made advances to him, is about forcibly to cut his plant.

256. The following question was submitted by the Magistrate of Midnapore through the Session Judge of that district :—A., a ryot, complains against C., as likely to carry off indigo plant grown by him, and states himself to have received advances from, and to have grown the disputed plant for B., an indigo planter : C., likewise an indigo planter, declares that he has also made advances to A., and that A. has cultivated plant for him too, which however A. denies. Trying such a case under Section 2 of Act IV. of 1840, I conclude that A. is the person manifestly to be considered in possession of the crop disputed, and is to be allowed to deliver the disputed plant to either B. or C. as he may think fit, and that an order may be given by the Magistrate prohibiting C. from attempting to take forcible possession : C. of course will have his redress in the Civil court against A. or B. under Regulation 6 of 1823, and Act X. of 1836, and if he timely take his measures there, supposing his claim to be in reality a better one than that of B., he might, upon giving security, on a summary enquiry, be enabled to cut and carry away

the disputed plant, which seems to me to be sufficient for the protection of his rights. The Courts of Nizamut adawlut were of opinion that the Magistrate had taken a correct view of the subject.—*Con.* 1359, *Cal. C.* 5th Aug., *West. G.* 2d Sept. 1842.

257. The owner of the factory for the time being should be considered as standing in the place of the former owner, by whom the advance was made, and equally entitled to adopt any of the processes for the recovery thereof which the Regulation referred to allows.—*Con.* 565, 9th July 1830, *quest.* 2.

The owner of the factory for the time being stands in the place of the former owner, & may adopt any of the processes the law allows.

258. If any person who may have made advances on conditions of the nature above described, shall have just reason to believe that an individual, under engagement with him, is evading or is about to evade the execution of his contract, by making away with, and disposing of the produce otherwise than as stipulated, or that he has engaged secretly or openly to supply the same to another it shall be competent to such person to present a petition of complaint to the zillah or city Judge, or to a Register exercising the powers of Joint Magistrate, within whose local jurisdiction the land stipulated to be cultivated with the indigo plant may be situated, filing with the same the original deed of engagement, by which the produce may be assigned and engaged to be delivered to himself or at his factory, and certifying in his petition, that such deed was voluntarily and bonâ fide executed by the individual complained against.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 1.

Such person how to proceed, when he has just reason to believe, that the ryot will dispose of the produce otherwise than stipulated.

259. On such petition and original deed of engagement being filed, a summons, or tulub chittee, shall be immediately issued through the nazir in the usual form, requiring the individual named in the petition to attend and answer to the complaint, either in person or by an authorized agent within such specified period as may, in each instance, appear reasonable, and which period shall in no case exceed twenty days.—*Ibid.* *Cl.* 2.

Summons to be issued for the attendance of the defendant

260. The Regulation in question being silent on the subject, the defendants should be summoned in the manner prescribed by the Regulations at present in force, viz. by an itilehnamah, to be served by a single peon; and that the order to cultivate can only be enforced by the menace of increased punishment on any further default.—*Con.* 564, 9th July 1830, *par.* 2.

The defendant must be summoned by an itilehnamah.

261. The officer entrusted with the execution of the process shall also be instructed to affix a copy of the summons in the village cutcherry, or other place of public resort, and to erect a bamboo on the specific parcel of ground on account of which the claim may have been preferred, and which it shall be the duty of the plaintiff or his agent to point out. By these means, sufficient public notice of the claim will be given, to enable persons desirous of contesting the plaintiff's right, or of establishing a prior right to the produce of the land, to appear either in person or by an authorized agent before the court for that purpose, and the failure so to attend before the summary decision be passed, will be held to bar the claim of any third party founded on any contract for the produce of the land in question, unless it be established by a regular suit.—*Reg.* 6, 1823, *Sect.* 3, *Cl.* 3.

Summons how to be served.

And public notice of the claim, how to be given.

262. If the officer serving the process shall not be able to execute it on the person of the defendant, he shall nevertheless publish the claim in the manner above directed, and if the defendant shall not appear to answer to the complaint within the period specified in the summons, and no other claim be preferred in bar of that of the plaintiff, the

On non-appearance of defendant or other claimants, evidence to be taken, and the case decided ex-parte.



Judge or other officer shall, after taking evidence to establish the deed and other allegations of the plaintiff, proceed to the adjudication of the claim, in the same manner as if the defendant had personally appeared.—*Reg. 6, 1823, Sect. 3, Cl. 4.*

In what cases an award shall be passed, adjudging the plaintiff's right to the produce.

263. If the defendant or his authorized agent should attend within the period specified, and should deny the execution of the deed of engagement filed by the complainant, proof of the same shall be taken, and if its voluntary execution be established to the satisfaction of the court, or other tribunal trying the case, and no preferable claim be established by a third party, a summary award shall be made, adjudging to the plaintiff the right of receiving the crop according to the terms of the agreement. The same principle shall be applied if the engagement be admitted, and no satisfactory reason be shewn why the defendant should not be held to the performance of his contract.—*Ibid, Cl. 5.*

If the plaintiff's claim be not established, the plaintiff to pay costs and compensation to the defendant.

264. If it be proved that the engagement was not duly and voluntarily executed by the defendant, or if it should appear that the proceeding is otherwise litigious and oppressive, and the claim unfounded, or that the plaintiff had no sufficient cause to warrant his application to the court, the complaint shall be dismissed, and the plaintiff shall be made liable to the payment of costs, and such reasonable sum in addition, as may seem to the Judge, or other officer trying the case, a proper compensation to the defendant for any trouble and annoyance to which he may have been subjected.—*Ibid, Cl. 6.*

Plaintiff and defendant may be examined, and compensation for expence and loss of time be awarded, if award is for defendant.

265. And it is hereby enacted, that the Court trying any suit instituted under the provisions of Regulation 6, 1823, of the Bengal code, or under the provisions of this Act, shall be authorized to examine both the plaintiff and the defendant whenever the court shall deem such examination necessary to the ends of justice; and if the award be in favour of the defendant, to assign to the defendant a sum which may be a compensation to him for the expence and loss of time occasioned by the proceeding.—*Act X. 1836, Sect. 4.*

Notice to be given to third parties, in what cases, and their claims how to be investigated.

266. If it should appear in the course of the enquiry, that the defendant is under engagement for the same land to a third party, notice shall immediately be issued for that party to appear and plead, either in person or by vakoel, and if such person or any third party shall, previously to the decision of the case, come forward and produce a similar deed of engagement, stipulating for the produce of the same portion of land, the Judge, or other officer trying the case shall, after such summary investigation as may be necessary, determine whether either of the parties have any just claim to the produce of the land, and if so, which of them may have the prior and better claim; a preference will of course be given to engagements duly registered under the provisions of Regulation 20, 1812. The result of such investigation shall be recorded, and a decree passed, adjudging the question of right between the parties.—*Reg. 6, 1823, Sect. 3, Cl. 7.*

Defendant not to be confined in jail or subjected to unnecessary detention.

267. No defendant, who may attend under the process described in this section, shall be confined in jail, or be in any manner detained longer than may suffice to take his answer to the claim, and to obtain from him such further explanations as the nature of the answer may suggest.—*Ibid, Cl. 8.*

Indigo planters cannot summon ryots and compel their attendance.

268. Indigo planters, not being zemindars or landholders, have no power to summon ryots and compel their attendance.—*Con. 394, 17th June 1825.*

266. And it is hereby enacted, that when a lawful contract shall have been made between a ryot and another party, by which contract the ryot shall have bound himself to cultivate indigo plant for the other party, or to deliver indigo plant to the other party, and when the other party shall have advanced money to the ryot for the purpose of enabling the ryot to fulfil such contract, then if any other person, knowing that such contract exists, and that such advance has been made, shall prevail upon the ryot to break such contract, the party who made the advance shall be entitled to proceed by civil action against the person who shall have so prevailed on the ryot, as well as against the ryot, and to recover from him or them, jointly or severally, damages to the extent of the injury sustained, together with costs of suit.—*Act X. 1836, Sect. 3.*

If any person knowing a ryot to have made a contract, for which money has been advanced to the ryot, shall prevail upon the ryot to break his contract, the party who made the advance shall be entitled to proceed by civil action to recover from the other party and ryot damages to the extent of the injury sustained.

270. Provided always, that nothing in this section contained shall be construed to give a right of action against any person in consequence of any act which that person may have done for the purpose of procuring payment of a debt, or performance of a lawful contract.—*Ibid.*

Provided that a person shall not be liable to an action in consequence of any act done to procure payment of a debt, or performance of a lawful contract.

271 A., an indigo planter, makes advances to cultivators, on engagements to deliver the whole of the indigo plant produced. B., another planter, seizes the crops of the said cultivators, and is sued by A. for damages. Determined that the action brought by A. against B. to recover damages will not lie; that A. may sue the cultivators for breach of engagement, and that the cultivators have their remedy against B.—*S. D. A. Sel. Rep. 26th June 1813, vol. 2, p. 69.*

A planter having made advances to ryots cannot bring an action against another planter for seizing the crops; he will sue the cultivators, who may sue the other planter.

## SECTION XXIX.

### *Summary Suits regarding Indigo—Option to institute a Summary or Regular Suit—Decision of the Suit.*

272. In cases in which a ryot who may have received advances and entered into written agreements for the cultivation and delivery of indigo plant in the manner indicated in this Regulation, shall have failed to cultivate the ground specified, or having cultivated it shall have failed or refused to complete his engagement, or shall have sold, made away with, or transferred the produce to another person, the party with whom such agreement was first made shall be at liberty to institute, at his option, either a summary or a regular suit.—*Reg. 6. 1823, Sect. 5, Cl. 1.*

Parties injured by breach of contract in regard to the cultivation and delivery of indigo plant, may institute either a summary or regular suit.

273. A Magistrate can interfere with indigo disputes, only when they are cognizable under Regulation 15, 1824, as construed by Circular orders, Nizamut adawlut, 27th December, 1830: such disputes as do not come within Regulation 15, 1824, must be heard and decided in the Civil court under Regulation 6, 1823. [*Since the rescission of Regulation 15, 1824, by Act IV. 1840, all disputes of this nature are cognizable by the Magistrate.*]—*Con. 652, 5th Aug. 1831.*

Interference of magistrates in indigo disputes.

274. If the summary process be adopted, and the cause be decided in favour of the plaintiff, the defendant shall be subjected to the payment of the amount of the advances actually received by him, with interest on the same, and the costs of the summary process.—*Reg. 6, 1823, Sect. 5, Cl. 2.*

Judgment to what extent in summary suits.

A planter, cannot cultivate the land by his own servants, nor can he demand the assistance of the police to compel his ryots to cultivate. His legal remedy in sec. 5, reg. 6, 1823.

275. I am desired to communicate to you the opinion of the Court, that an indigo planter, under the circumstances above stated, is not competent to cultivate the land by means of his own servants, nor has he a right to demand the assistance of the Police for the purpose of compelling the ryots to fulfil his contract. His only legal remedy in such case is that prescribed by Section 5, Regulation 6, 1823, to the provisions of which I am desired to refer you.—*Con. 385, 29th April 1825.*

Amount of penalty to be awarded in regular suits, where the breach of contract may not be ascribable to fraud or dishonesty

276. If no fraud or dishonest dealing be established, and the failure of a ryot or other contractor to execute the stipulations of his engagement by the delivery of indigo plant in the manner stipulated, be owing to accident or to any cause not implying fraud or dishonesty, the penalty to be adjudged against a contractor shall not exceed three times the sum advanced, as the consideration for executing the deed, including interest.—*Reg. 6, 1823, Sect. 5, Cl. 4.*

The highest amount of penalty for non-performance of an indigo contract, i. e. three times the amount advanced, includes interest.

277. A question having been referred by the Judge of Allahabad, whether it was intended by Clause 4, Section 5, Regulation 6, 1823, to be ruled that the highest amount of penalty including interest on the sum advanced, awardable against a contractor, is not to exceed three times the sum advanced, or whether the penalty may be to the amount of three times the sum advanced and of any interest that may have accrued upon that sum at the time of the suit being decided?—It was held that the meaning of the enactment is, that interest is included in the "three times the sum advanced."—*Con. 1310, West. C. 24th Sept, Cal. C. 22d Oct. 1841.*

### SECTION XXX.

*Summary Suits regarding Indigo—Summary Investigation—Institution of a Regular Suit to annul the Award—how and by whom to be conducted.*

Summary investigations, how and by whom to be conducted.

278. Summary investigations, under this Regulation, shall be conducted according to the form and in the manner prescribed for the conduct of summary suits for arrears of rent: they shall either be tried by the Judge, or be referred to the Collector of the district, or to the Register. In cases referred to the Collector, that officer (as well as the Register,) shall pass a decision on them, instead of sending them back to the Judge with a report, and there shall be no appeal from any summary decision passed by those officers respectively, if regularly made and in a matter duly cognizable under this Regulation. It shall nevertheless be competent to any person whose claim under a deed of engagement for the cultivation and delivery of indigo plant may have been set aside by a summary award, or who may be otherwise dissatisfied with the decision passed on a summary investigation under the foregoing provisions, to institute a regular suit for the recovery of the penalty stipulated in the deed of engagement, or for the establishment of any other claim or interest to which he may deem himself entitled.—*Reg. 6, 1823, Sect. 6.*

The rules in reg. 2, 1805 should be applied to indigo suits under reg. 6, 1823.

279. The rules prescribed in Regulation 2, 1805, in regard to the institution of summary suits for rent, should be applied to suits for the recovery of advances for indigo, instituted under Regulation 6, 1823.—*Con. 565, 9th July 1830, quest. 1.*

280. Summary suits to enforce the execution of written engagements for the cultivation and delivery of indigo, instituted under the provisions of Section 6, Regulation 6, 1823, not coming within the description of cases to which the provisions of Regulation 8 of 1831 were intended to apply, are not primarily cognizable by the Collectors under the latter enactment, but may still be referred to them for trial and decision at the discretion of the Judge, under the section of the Regulation first cited, and when so transferred, are to be disposed of in the manner laid down in that section.—*Cir. Ord. Cal. and West. C. 20th Nov. 1835, par. 2.*

Summary suits under sec. 6, reg. 6, 1823, may be referred for trial and decision to the collector, at the discretion of the Judge.

281. And it is hereby enacted, that it shall be competent to a zillah or city Judge, to refer to a Principal Sudder Ameen or Sudder Ameen, according to the amount of their respective jurisdictions, any suit, whether regular or summary, which may be instituted under the provisions of Regulation 6, 1823, or under the provisions of this Act, to be enquired into and decided by the said Principal Sudder Ameen, or Sudder Ameen, in the same manner, and under the same rules, as such suit may be enquired into and decided by a zillah or city Judge, anything in the existing Regulations to the contrary notwithstanding.—*Act X. 1836, Sect. 5.*

Zillah or city Judge may refer to a P. S. A. or S. A., any suits instituted under reg. 6, 1823, or under this act.

282. Held, on a reference from the Session Judge of Midnapore, that the decision of a Principal Sudder Ameen or Sudder Ameen passed in a summary suit instituted under Regulation 6, 1823, which has been referred to him for decision under Section 5, Act X. of 1836, is not appealable, with reference to the rule of Section 6 of the former enactment.—*Con. 1357, Cal. C. 6th Aug., West. C. 2d Sept. 1842.*

The decisions of a P. S. A. or S. A. in summary suits under reg. 6, 1823, are not appealable.

283. Regular suits instituted in conformity with the provisions of Regulation 6, 1823, and Act X. 1836, in which the amount of the claim does not exceed 300 rupees, and in which neither party may be an European British subject, European foreigner, or American, are cognizable by Moonsiffs in like manner as other cases legally within the competency of those officers to dispose of. [Section 7. Act VI. 1843, removes the restriction against the cognizance by Moonsiffs of suits in which Europeans are parties]—*Con. 1092, West. C. 2d, Cal. C. 23d June 1837.*

Regular suits under reg. 6, 1823 and Act 10, 1836, may be referred to moonsiffs, if within their competence

## SECTION XXXI.

### *Summary Suits regarding Indigo—Delivery of the Plant pending Enquiry—Prevention of its Removal.*

284. If pending the summary enquiry in the manner above directed it shall appear, that the plant on the ground is in a state fit to be cut, and will be injured or destroyed if not cut, it shall in such case be competent to the Judge or other officer trying the case, to pass an order for the delivery of the plant to either of the parties, provided that the said party consents and engages to pay to the other claimant (if the summary award should be ultimately in favour of the latter) a specific pecuniary compensation; the amount of such compensation shall be fixed by the Judge, or other person trying the case, in communication with the parties, and shall be regulated with reference to the estimated produce of the ground, and to the probable value of such produce when manufactured, and the amount when so fixed, shall be carefully recorded on the proceedings.—*Reg. 6, 1823, Sect. 3, Cl. 9.*

In what cases an order may be issued to deliver the plant to a party, before the summary enquiry may be completed.

Engagement to be entered into by such party.

Whenever the right to indigo plant is contested and an order made for delivery to one of the parties, the party shall not cut or remove the indigo until he have given security to make good any claim which shall be ultimately established.

285. And it is hereby enacted, that whenever the right to indigo plant may be contested, and an order shall be passed, under the provisions of Clause 9, Section 3, Regulation 6, 1823, of the Bengal code, for the delivery of indigo plant to one of the parties claiming the same, such party shall not be allowed to cut or remove the indigo plant until he shall have given sufficient security to the satisfaction of the court trying the case, to make good any claim that shall be ultimately established to such indigo plant whether arising from a prior right to the produce of the land, or from an arrear of rent due on account of the specific parcel of land from which the plant may have been produced.—*Act X 1836, Sect. 2.*

Engagements entered into by parties applying for possession of indigo crops under cl 9, sec 3, as above, can be enforced under the summary award

286. The Court of Sudder dewanny adawlat have had before them your letter, dated the 15th inst., requesting the Court's construction of Regulation 6, 1823, as to whether the engagement executed by parties applying for possession of indigo crops, under the provisions of Clause 9, Section 3 of the above enactment, can be enforced under the summary award. In reply, I am desired to answer your question in the affirmative, and to acquaint you, that the summary decree should contain a provision for the payment, by the party cast, of the sum specified in his engagement. In the event of the amount not being paid, it should be realized by the process prescribed for giving effect to summary judgments.—*Con. 515, 24th July 1829.*

Case in which ryot asserting his right to be under engagements to an indigo planter complains that another planter, under the plea of having made advances to A, is about forcibly to cut the crop

287. A., a ryot, asserting himself to be under engagement to B, an indigo planter, complains that C., another planter, who states that he has made advances to A., is about forcibly to cut the crop. Held that A., being in possession, may give the disputed crop to B. or C., and that the Magistrate may prohibit C. from attempting to take forcible possession; C. of course will have his redress in the Civil court against A. or B., under Regulation 6, 1823, and Act X. 1836, and if he timely take his measures there, supposing his claim be in reality a better one than that of B., he may upon giving security on a summary enquiry be enabled to cut and carry away the disputed plant.—*Con. 1359, Cal. C. 5th Aug, West. C. 2d Sept 1842.*

Authority to watch fields and to prevent removal of the plant, given to parties in certain circumstances

288. Any person in whose favour a summary award shall have been passed for the produce of any defined spot of land, shall be entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement, and in the event of any attempt being made to cut or remove the plant, it shall be competent to the person holding the decree to apply to the nearest Police darogah, and to claim from him the assistance of the Police in preventing such removal; it shall, moreover, be the duty of the Police officers, and of all other officers, on such a decree being exhibited, to aid the person in whose favour it may have been passed to the utmost of their power.—*Reg. 6, 1823, Sect. 4, Cl. 1.*

Security for rent due to landholders, how provided

289. In order that the foregoing rule may not operate to the prejudice of the landholders, who, by the existing Regulations, are authorized to attach the crops for the realization of rents justly due to them, it is hereby provided that whenever any manufacturer who may have obtained an award under the foregoing rules, may cause the plant to be cut and taken away, he shall be held responsible, conjointly with the ryot, for any arrear of rent which may have been due on account of the specific parcel of ground from which the indigo plant may have been taken.—*Ibid, Cl. 2.*

## SECTION XXXII.

*Summary Suits regarding Indigo—Stamps, and Miscellaneous Rules.*

290. No objection shall be taken against any deed of contract for the cultivation and delivery of indigo plant on account of its not bearing the proper stamp, provided that the same be executed on paper bearing a stamp of such an amount, as would be required under the rules of Section 11, Regulation 1, 1814, for a bond of the amount actually advanced or acknowledged to be advanced as the consideration for entering into the agreement.—*Reg. 6, 1823 Sect. 7.*

Explanation of the value of stamped paper employed in engagements for the cultivation and delivery of indigo plant.

291. I am directed by the Court to acknowledge the receipt of your letter of the 15th instant, requesting to be informed whether a contract entered into by a ryot to cultivate indigo for a period of five or ten years, and by which he is required to settle his accounts annually, and receive fresh advances, is valid, if executed on stamped paper required for the amount of the first year's advances; and whether the ryot can be obliged by it under Regulation 5, 1830, to settle his accounts at the end of the year, or on failing to do so, be compelled, under Section 3, to give the number of bighas mentioned for the entire period named in the contract. In reply, I am directed to inform you that, provided it be proved that the engagement to cultivate indigo was voluntarily executed by the ryot, the Criminal court must enforce the provisions of Section 3, Regulation 5, 1830 [repealed by Act XVI. 1835,] and that, under Section 7, Regulation 6, 1823, no objection can be made to the engagement on account of the stamp, provided the value of it be such as is required for a bond of a similar amount. I am further directed to observe that Regulation 5, 1830, is silent as to compelling a ryot to settle his accounts at the end of the year.—*Con. 873, 28th Feb. 1834*

No objection can be taken to the engagement under sec. 7, reg. 6, 1823, on account of the stamp, provided the value is such as is required for a bond of similar amount.

292. No objection shall be taken to the validity of any deed of engagement for the cultivation and delivery of indigo plant, on the ground of its having been entered into by more than one individual, or of its including more than one transaction; provided that the obligation of each individual be distinctly specified, and the amount of the stamp be such as would have been required for a bond of an amount equal to that of the aggregate of all the sums acknowledged to have been advanced.—*Reg. 6, 1823, Sect. 8.*

Such deeds not invalid, on consequence of their including several individuals, and several separate transactions.

293. Persons wilfully damaging or causing to be damaged, indigo plant, by allowing cattle to trespass thereon, or by any other means, shall, on the complaint of the ryot to whom the crop may belong, or of the manufacturer by whom advances may have been made for the cultivation and delivery of the said plant, be liable, on proof of the offence, to such punishment by fine and imprisonment as the Magistrate is competent to inflict under Section 19, Regulation 9, 1807, due regard being had to the nature of the case, and the circumstances in life of the offender.—*Reg. 5, 1830, Sect. 1.*

Persons damaging indigo plant how to be proceeded against and punished.

## SECTION XXXIII.

*Summary Suits regarding Indigo—Mode in which the Ryot may close his Contract.*

Persons wishing to be released from their engagements to petition the judge in certain cases

294. Any person who, having received advances under a written agreement for the cultivation of indigo, shall be desirous on the expiration of the period of his contract to settle his account shall be at liberty, in the event of the proprietor of the factory or the person acting in his behalf refusing to settle the same, to present a petition to

The judge to hold a summary enquiry

the Zillah court, and the Judge, after a summary enquiry in the presence of the parties, or their authorized agents into the merits of the case, shall, on proof of the expiration of

If no balance is due from the petitioner, or the balance be deposited in court, the judge to grant a release and pay the balance to the proprietor of the factory

the contract, and of there being no balance due from the petitioner, or if the petitioner shall deposit in court the amount of any balance that may be adjudged to be due from him, grant the said petitioner a release from his engagement, and shall pay over the amount of any balance that may be deposited by him to the proprietor, or to the person acting in his behalf.—*Reg. 5, 1830, Sect. 5, Cl. 1*

The judge how to proceed, if the proprietor objects to receive the balance

295. If the proprietor or person aforesaid shall refuse to receive the balance awarded to him by the summary process above provided, the Judge shall return the amount to the petitioner, leaving the defendant to seek his remedy by a regular suit.—*Ibid Cl. 2.*

A zillah judge has no summary jurisdiction under Cl. 1, Sect. 5, as above on the application of a ryot to settle his accounts before his contract expires

296. Held by the Calcutta Court, in concurrence with the Western Court, that a zillah Judge has no summary jurisdiction under the provisions of Clause 1, Section 5, Regulation 5, 1830, in the case of an application by a ryot to settle his accounts with an indigo factory before the expiration of his contract. A summary decision of the Judge of Rapsahye in a case of this nature, was quashed by the court on a summary appeal.—*Cal. 1130, 9th Feb. 1838.*

A ryot cannot claim a settlement of his account under Sect. 5, as above, till the expiration of the period of his contract. Remedy of the ryot, if he asserts that the planter owes him for plant.

297. In reply to your letter of the 7th instant, I am directed by the Court to communicate to you their opinion that a ryot cannot claim a settlement of his account under Section 5, Regulation 5, 1830, till "the expiration of the period of his contract," and that if the ryot asserts that the planter is indebted to him for indigo plant, and refuses to pay him what he demands the ryot must seek redress by a regular suit.—*Cal. 934, Cal. C. 20th Feb., West. C. 13th March 1835.*

Summary suits under Sect. 6, Reg. 5, 1830 are cognizable by the judge only, & are not referrible to the revenue authorities

298. Summary suits instituted under the provisions of Section 5, Regulation 5, 1830, by persons who may be unwilling to renew their contracts for the cultivation of indigo and who may sue in consequence to obtain a release from their engagements, are cognizable by the Judge only, and are not referrible to the revenue authorities, under either of the enactments cited in the preceding paragraph.—*Cal. Ord. Cal. and West. C. 20th Nov. 1835, par. 3.*

## SECTION XXXIV.

*Miscellaneous Cases—Proceedings on the Report of the Disqualification of a Landholder.*

299 If a Collector shall report any proprietor to be a minor, and the proprietor, or any person on his behalf, shall deny that he is under age, such proprietor or person shall be at liberty to represent the circumstances to the Court of Dewanny adawlut of the zillah wherein the estate may be situated, the Judge of which shall forward the representation to the Sudder dewanny adawlut, which court shall issue a precept, under the seal of the court, and attested by the Register, to the Judge of the zillah, or to the Provincial court of appeal of the division, to call the proprietor before the court, and ascertain his age by the evidence on oath of not less than three credible persons well acquainted with him and also by such other enquiries as may appear to the court calculated to ascertain the truth and certify its proceedings including any representations or evidence that the proprietor, or any person on his behalf, may have to adduce, with its opinion on the case, to the Sudder dewanny adawlut, which court shall determine whether such proprietor be a minor or not. The decision of the Sudder dewanny adawlut shall be final, and the court shall certify a copy of its decision to the Governor General in Council who will order the estate to be put under the charge of the Court of Wards or not, according as the proprietor may be adjudged by the Sudder dewanny adawlut to be a minor or otherwise. *Reg. 10, 1793, Sect. 5, Cl. 2.—Benares Reg. 6, 1822, Sect. 2. Cl. 1 and Cong. Prov. Reg. 52 1803, Sect. 9, Cl. 2*

Minors.

300 If a proprietor of land shall be deemed disqualified on the ground of lunacy, idiotism, or other disqualifying natural defect or infirmity the Board of Revenue are to order the Collector to represent the circumstances through the vakeel of Government, to the Court of Dewanny adawlut of the zillah, the Judge of which shall transmit a copy of the representation to the Sudder dewanny adawlut. This court shall issue a precept to the Court of Appeal of the division, or to the Judge of the zillah within the jurisdiction of which the proprietor may reside to bring him before the court, to ascertain his actual state by ocular proof; and the court shall further take the declaration upon oath of not less than three credible persons acquainted with the party setting forth their opinion of his condition, with the grounds of it. The court is to transmit all its proceedings with its opinion on the case, to the Sudder dewanny adawlut, which court shall determine finally whether the stated ground of disqualification be well founded or not, and certify a copy of its decision to the Governor General in Council, who will order the Court of Wards to take the estate of the proprietor under their care or not, according as the proprietor may be adjudged by the Sudder dewanny adawlut to be disqualified or otherwise.—*Reg. 10 1793, Sect. 5 Cl. 3.—Benares Reg. 6, 1822, Sect. 2.—Cl. and Cong. Prov. Reg. 52 1803, Sect. 9, Cl. 3*

Lunatics, or others disqualified by natural defects or infirmities.

301 Persons not born in a state of idiotism, but who may have been declared by the Sudder dewanny adawlut disqualified as lunatics, are to be produced annually before

Measures to be taken occasionally to as-



certain continuance  
of disqualification

the Judge of the Dewanny adawlut in the jurisdiction of which they may reside, or oftener if he shall think fit, in order to ascertain whether they be restored to sanity or otherwise, and if in any instance the ground of disqualification shall appear to the Judge to be completely removed, he shall immediately report the same, with a full relation of the circumstances of the case, to the Sudder dewanny adawlut, which court shall finally determine whether the ground of disqualification be removed or not. The court is to communicate its decision to the Governor General in Council, who will order the Court of Wards to deliver over charge of the estate to the proprietor or not, according as the ground of his disqualification may be adjudged by the court removed, or otherwise. — *Reg. 10, 1793; Sect. 5, Cl. 5. — Benares Reg. 6, 1822, Sect. 2. — Cal and Cong. Prov. Reg. 52, 1803; Sect. 9, Cl. 3.*

Disqualified prop-  
rietary specified in  
cl. 2, 3 & 4, who may  
on the ground of  
their disqualification  
moved, how to pro-  
ceed to recover the  
management of their  
estates.

302. Any person who may have been adjudged disqualified, on any of the grounds specified in clauses second, third, or fourth, and who may deem the ground of his disqualification removed, shall be at liberty to present the circumstances to the Judge of the Dewanny adawlut of the zillah, who shall forward the representation to the Sudder dewanny adawlut. This court shall issue a precept to the Judge of the Zillah court, or to the Provincial court of appeal of the division, to enquire into the case, and to receive such evidence as the disqualified proprietor may have to offer in support of his representation. The court is to report the result of its enquiry, with its opinion thereon, to the Sudder dewanny adawlut, which court shall determine finally whether the ground of disqualification be or be not removed, and report its decision to the Governor General in Council, who will order the Court of Wards to restore the proprietor to the management of his lands or not, according as the ground of disqualification may be adjudged by the Sudder dewanny adawlut to be removed, or otherwise. — *Reg. 10, 1793; Sect. 5, Cl. 6. — Benares Reg. 6, 1822; Sect. 2. — Cal and Cong. Prov. Reg. 52, 1803; Sect. 9, Cl. 3.*

## SECTION XXXV.

### *Miscellaneous Cases—Appointment of Managers to Disputed Estates.*

The judges de-  
clared competent to ap-  
point managers of  
joint undivided es-  
tates on sufficient  
cause shewn

303. Inconvenience to the public and injury to private rights having been experienced in certain cases from disputes subsisting among the proprietors of joint undivided estates, it is hereby enacted, that whenever sufficient cause shall be shewn by the revenue authorities, or by any of the individuals holding an interest in such estates for the interposition of the Courts of judicature, it shall be competent to the zillah and city Judges to appoint a person, duly qualified and under proper security to manage the estate, that is, to collect the rents, and discharge the public revenue, and provide for the cultivation and future improvement of the estate: Provided however, that if the revenue authorities or any of the individuals holding an interest in the estate shall be dissatisfied with the selection made by the zillah or city Judge, of the individual to perform the duty in question, it shall be competent for them to represent their objections to the Provincial court of appeal, which court will confirm the manager chosen, or

Objections against  
the person so ap-  
pointed to be repre-  
sented to the provin-  
cial courts

order the Judge to select and appoint another person, according as on consideration of the circumstances of the case may appear to them reasonable and proper.—*Reg. 5, 1812. Sect. 26.*

304. In like manner should the authorities aforesaid or any individual holding an interest in the estate be at any subsequent time dissatisfied with the conduct of the manager, it shall be competent for them or him to represent the circumstances of the case to the zillah or city Judge, and to move the court for the removal of the said manager: and should those authorities or persons be dissatisfied with the orders which may be passed on the subject by the zillah or city Judge, it shall be competent for them to bring the case before the Provincial court of appeal, which court will determine on the propriety of removing the manager or otherwise, as may appear to them to be right and proper.—*Ibid. Sect. 27.*

Court may be moved for the removal of such managers should their conduct be unsatisfactory

305. I am directed by the Court to inform you, that you are competent, under the provisions of Section 26, Regulation 5, 1812, to attach the whole (but not a portion of a joint undivided estate) on sufficient cause being shewn, but that your decision as to the sufficiency of the cause is open to appeal.—*Con. 717, 21st Sept. 1832*

A court may attach the whole, but not a part only of a joint undivided estate on sufficient cause, the sufficiency of which is open to appeal

306. Held on a reference from the Judge of Mymensah, that the provisions of Section 26, Regulation 5, 1812, are not applicable to dependant talooks.—*Con. 1293, Cal. C. 7th Aug., West. C. 4th Sept. 1810*

Reg. 5, 1812, sec. 26 not applicable to dependant talooks

307. The Judge of zillah Jnanpore was informed, on the 3d December, 1812, in answer to a reference transmitted through him from the assistant Judge, that the Court were of opinion, that in cases requiring the appointment of a manager of a joint and undivided estate, under the provisions of Section 26, Regulation 5, 1812, endeavour should, in the first instance, be made to prevail on one of the family, or some friend of the sharers, to undertake that duty gratuitously, but that in the event of its being necessary to make a pecuniary compensation to the person appointed to act as manager, the amount of such compensation must be fixed, on consideration of the circumstances of each case, by the Judge making such appointment: and that the manager so appointed must account to the several proprietors for their respective profits arising from the estate, after discharging the public revenue, (to be paid to the Collector in the same manner as the payment was before made by the proprietors,) and deducting the amount of the compensation which he may have been authorized to receive.—*Con. 115, 3d Dec. 1812.*

An attempt should be made to prevail on the family or friends to take charge of the estate

Remuneration of the manager

His accountability to the several proprietors

308. The Court entirely concur with the Board of Commissioners, in the expediency of establishing a rule for proportioning, as far as practicable, the expence of management to the extent and produce of the estate, when a manager may be appointed under Section 26, Regulation 5, 1812: and beg leave to suggest that the Board of Commissioners and Board of Revenue be consulted on the tenor and limitations of the rule which may appear proper to enact for this purpose.—*Con. 112, 3d Feb. 1814, par. 4.*

The expence of management should be apportioned to the extent and produce of the estate

309. With regard to the responsibility of managers of estates appointed under Section 26, Regulation 5, 1812, the Court are of opinion, that as it is not particularly defined in that Regulation, it must be considered that of an agent, acting for the benefit of his principal, and bound to a faithful discharge of the trust committed to him. The Court are further of opinion

In what light the manager will be considered. Definition of the word "proper security"

on, that "proper security," directed to be taken from managers appointed under the section abovementioned, is not restricted to personal bail for appearance, but extends to security for a faithful account of the manager's receipts, and should be proportionate to "the extent thereof," as declared in Regulation 5, 1799, Section 6, and Regulation 3, 1803, Section 16, Clause 6 with respect to administrators appointed by the Civil courts in the cases therein provided for.—*Con.* 142, 3d Feb. 1811, *par* 5

Case in which the manager of an estate borrows money for the payment of arrears

310. The manager of an estate borrows money for the payment of arrears of revenue due to Government, giving a bond in the name of two proprietors, one of whom [since dead] had sole possession at the time determined, that the manager is personally responsible for the amount in the first instance, with right of recovery from the heirs of the deceased possessor of the estate, on whose account the loan was contracted.—*S. D. A. Sel. Rep.* 29th May 1813, *vol.* 2, *p.* 61

The public sale of lands for arrears of revenue is not restricted or affected by reg. 5, 1812, sec. 26

311. The public sale of lands for arrears of public revenue in all cases wherein the Governor General in Council or Board of Revenue, or Board of Commissioners, in cases left to the discretion of those boards, may judge it proper to direct such sales, is not restricted or in any respect affected by the appointment of a manager under Section 26, Regulation 5, 1812.—*Con.* 142, 3d Feb. 1811

A manager of an estate, as above, may grant a farming lease, and the farmer may enforce the provisions of sec. 9 and 10, reg. 5, 1812

312. A manager of an estate, appointed under Section 26, Regulation 5, 1812 and Regulation 5, 1827, is competent to grant a farming lease of any part of the property under his charge. A farmer holding his lease from such manager is competent to enforce the provisions of Sections 9 and 10, Regulation 5, 1812, in regard to the enhancement of rent.—*S. D. A. Sel. Rep.* 12th Aug. 1846 *vol.* 7, *p.* 277

Rules for the issue of precept for holding estates under attachment and for appointing managers

313. Whenever the Zillah and City courts may deem it just and proper, under the provisions of the several Regulations abovementioned, to provide for the administration or management of landed property the court shall issue a precept to the Collector of land revenue of the district wherein the estate may be situated directing him to hold the estate in attachment and to appoint a person for the due care and management of the estate under good and adequate security for the faithful discharge of the trust in a sum proportionate to the extent thereof, provided however, that if any person holding an interest in the estate shall be dissatisfied with the selection made by the Collector of the individual to perform the duty in question or with the conduct of the manager at any time after his appointment it shall be competent to such person to represent his objections to the Board of Revenue and the board will either confirm the manager chosen, or order the Collector to appoint another person, as on consideration of the circumstances of the case may appear reasonable and proper.—*Reg.* 5, 1827, *sect.* 3

The precept shall specifically state the property to be included in the attachment

314. The precept of the Zillah or City court abovementioned shall state specifically the property to be included in the attachment, and the attachment shall not be withdrawn without a further precept from the court to that effect.—*Ibid.* *sect.* 4

Modification of certain regulations regarding the management of estates under attachment

315. The rules contained in Sections 5 and 6, Regulation 5 1799, and Clauses 5 and 6 Section 16, Regulation 3, 1803, and Sections 26 and 27, Regulation 5 1812, and clause third, Section 5, Regulation 6, 1813, regarding the administration and management of estates under orders of the Zillah and City courts, are hereby declared subject to the following modifications.—*Ibid.* *sect.* 2.

## SECTION XXXVI.

*Miscellaneous Rules—Putnee Talooks—Nature of Putnee and Durputnee Tenures.*

316. By the rules of the perpetual settlement, proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mehals, were declared to be entitled to make any arrangements for the leasing of their lands in talook or otherwise, that they might deem most conducive to their interests. By the rules of Regulation 44, 1793, however, all such arrangements were subjected to two limitations: first, that the jumma, or rent, should not be fixed for a period exceeding ten years; and secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale. The provisions of Section 2, Regulation 44, 1793, by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by Section 2, Regulation 5, 1812, and in Regulation 18 of the same year it is more distinctly declared, that zemindars are at liberty to grant talooks or other leases of their lands fixing the rent in perpetuity at their discretion; subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue, in the same manner as heretofore.—In practice the grant of talooks and other leases at a rent fixed in perpetuity had been common with the zemindars of Bengal for some time before the passing of the two Regulations last mentioned; but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare in the rules of Regulations 5 and 18, 1812, or in any other Regulation, whether tenures at the time in existence and held under covenants or engagements entered into by the parties in violation of the rule of Section 2, Regulation 44, 1793, should, if called in question, be deemed invalid and void as heretofore.—This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years, while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force. Furthermore, in the exercise of the privilege thus conceded to zemindars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Rajah of Burdwan, but has since been extended to other zemindariess—the character of which tenure is, that it is a talook created by the zemindar, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zemindar's discretion; but even if the original tenant be excused, still in case of sale for arrears or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zemindar. By the terms also of the engagements interchanged, it is amongst other stipulations provided, that in

Preamble

case of an arrear occurring, the tenure may be brought to sale by the zemindar, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated putnee talooks, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of durputnee talookdars : these again sometimes similarly underlet to seputneedars, and the conditions of all the title deeds vary in nothing material from the original engagements executed by the first holder. In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant that is, whether in case the proceeds of sale should exceed the zemindar's demand of rent, the tenant would be entitled to such excess, neither is the manner of sale specified, nor do the usages of the country, nor the Regulations of Government afford any distinct rules, by the application of which to the specific cases, the defects above alluded to could be supplied, or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner. The tenures in question have extended through several zillahs of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of civil judicature in regard to them, have been productive of such confusion as to demand the interference of the legislature. It has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a putnee talook as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by putneedars and others, establishing at the same time such provisions as have appeared calculated to protect the under-lessee from any collusion of his immediate superior with the zemindar, or other, for his ruin, as well as to secure the just rights of the zemindar on the sale of any tenure under the stipulations of the original engagements entered into with him.-- It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale, --and whereas, the estates of zemindars under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue, payable by monthly kists to Government, it has seemed just to allow any zemindar who may have granted tenures with a stipulation of the right to sell for arrears, the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year, as heretofore allowed by the Regulations in force.-- it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though in conformity with the Regulations heretofore in force the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid, at the close of the Bengal year. It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters. The following rules have accordingly been enacted by His Excellency the Most Noble the Governor General in Council, to take effect from the

date of their promulgation throughout the several districts of the province of Bengal, including Midnapore.—*Reg. 8, 1819, Sect. 1.*

317. It is hereby declared, that any leases or engagements for the fixing of rent now in existence, that may have been granted or concluded for a term of years, or in perpetuity, by a proprietor under engagements with Government, or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged, notwithstanding that the same may have been executed before the passing of Regulation 5, 1812, and while the rule of Section 2, Regulation 44, 1793, which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question;—provided however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to Government, from the liability to be cancelled on sale of the said estates for arrears of the said revenue, under the rule of Section 5, Regulation 44, 1793, unless specially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.—*Ibid, Sect. 2.*

Leases fixing rent in perpetuity, or for a longer term than 10 years, declared valid, though executed while sec. 2, reg. 44, 1793, was in force.

318. The tenures known by the name of putnee talooks as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared, that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts, and subject to the process of the Courts of judicature, in the same manner as other real property.—*Ibid, Sect. 3, Cl. 1.*

Putnee tenures declared valid, transferable and answerable for debt.

319. Putnee talookdars are hereby declared to possess the right of letting out the lands composing their talooks in any manner they may deem most conducive to their interest, and any engagements so entered into by such talookdars with others shall be legal and binding between the parties to the same, their heirs and assignees.—provided however, that no such engagements shall operate to the prejudice of the right of the zemindar to hold the superior tenure, answerable for any arrear of his rent, in the state in which he granted it, and free of all encumbrance, resulting from the act of his tenant.—*Ibid, Cl. 2.*

Putnee dars right of underletting, declared.

320. If the holder of a putnee talook shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to putnee talooks, in so far as concerns the grantor of such under-tenure. The same construction shall also hold in the case of putnee talooks of the third or fourth degree.—*Ibid, Sect. 4.*

Interior tenures held under similar title deeds will be deemed to confer a similar interest to that provided for putnee talooks in sec 3

321. The right of alienation having been declared to vest in the holder of a putnee talook, it shall not be competent to the zemindar or other superior, to refuse to register, effect to a transfer.

Zemindar not entitled to refuse to give effect to a transfer.

and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee. In conformity, however, with established usage, the zemindar or other superior shall be entitled to exact a fee upon every such alienation, and the rate of the said fee is hereby fixed at two per cent. on the jumma or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account. The zemindar shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jumma or yearly rent, payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure. The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the zemindar or other superior, under the rules hereinafter contained. The purchaser at such a sale shall be entitled to have his name registered, and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.—*Reg. 8, 1819, Sect. 5.*

But may demand his fee.

Fee fixed at 2 per cent on the jumma.

But the maximum 100 rs.

May also demand security.

As far as half the jumma.

Above rules to apply to sales in execution and all alienations.

But no fee on sales for arrears.

Zemindar may refuse sanction to transfer, till fee and security be tendered.

Sufficiency of security, if contested, to be determined by appeal to civil court.

322. It shall be competent to the zemindar or other superior to refuse the registry of any transfer, until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted:—provided however, that if the security tendered by any purchaser or transferee, should not be approved by the zemindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zemindar to accept it, and give effect to the transfer without delay. It is hereby provided, that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a putnee talook, nor to any alienation other than of the entire interest, for no apportionment of the zemindar's reserved rent can be allowed to stand good, unless made under his special sanction.—*Ibid, Sect. 6.*

Upon public sale, if security be not tendered within one month, zemindar may attach.

323. In case of a putnee tenure sold in execution of a judgment of court, if the purchaser do not within the period of one month from the sale conform to the rules of Section 5 of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the zemindar or other superior shall be entitled of his own authority to send a sezawul to attach and hold possession of the tenure, until the forms prescribed be observed. In case also of the sale of a putnee tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the zemindar and the purchaser fail to furnish the same within one month of the date of sale, the zemindar shall similarly be entitled to send a sezawul to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given. Attachments made under this section shall be regarded as trusts for the benefit and at the risk of the purchasers, consequently after deducting the rent due and the expence of attaching, any surplus that may be yielded by the collections, shall be held in deposit for such purchaser; but if

Attachment to have the effect of a trust.

the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the zemindar or other superior making the attachment, shall be received as *prima facie* evidence to warrant process for an arrear so accruing.—*Reg. 8, 1819, Sect. 7.*

## SECTION XXXVII.

*Miscellaneous Rules—Putnee Talooks—Sale of them on account of Arrears.*

324. In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this section, it shall not be liable to be cancelled for the same. Putnee tenures declared not voidable for arrears. under the rule contained in the seventh clause of Section 15, Regulation 7, 1799, for leases conveying a limited interest in the land; but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale, beyond the amount of the arrear of rent due;—subject, however, to the provisions contained in Section 17 of this Regulation.—*Reg. 8, 1819, Sect 3, Cl. 3.*

325. Zemindars, that is, proprietors under direct engagements with the Government, shall be entitled to apply in the manner following for periodical sales of any tenures, upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged, on the creation of the tenure. The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.—*Ibid, Sect 8, Cl. 1.* Zemindars to be allowed periodical sales of tenures, in which right to sell for arrears is reserved by stipulation.

326. On the first day of Bysakh, that is, at the commencement of the following year from that of which the rent is due, the zemindar shall present a petition to the Civil court of the district, and a similar one to the Collector, containing a specification of any balances that may be due to him on account of the expired year from all or any talookdars or other holders of an interest of the nature described in the preceding clause of this section. The same shall then be stuck up in some conspicuous part of the *cutcherry*, with a notice that if the amount claimed be not paid before the first of Jyote following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should however, the first of Jyote fall on a Sunday, or holiday, the next subsequent day, not a holiday, shall be selected instead: a similar notice shall be stuck up at the *sudder cutcherry* of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent, to be similarly published at the *cutcherry* or at the principal town or village upon the land of the defaulter. First sale to be applied for on the first of Bysakh. Notice to be published that it will take place on the first of Jyote.



Notice to be sent  
into the mofussil.  
Rules for serving

The zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mofussil shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager for the same; or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear from the tenor of the receipt or attestation in question, that the notice has been published at any time previous to the fifteenth of the month of Bysakh, it shall be a sufficient warrant for the sale to proceed upon the day appointed. In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the cutcherry of the nearest Moonsiff, or if there should be no Moonsiff, to the nearest thannah, and there make voluntary oath of the same having been duly published—a certificate to which effect shall be signed and sealed by the said officers and delivered to the peon—*Reg. 8, 1819, Sect. 8, Cl. 2.*

Mid year sale to be  
applied for on the  
first of Kartick.

327. On the first day of Kartick in the middle of the year, the zemindar shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Assin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aughun, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick to less than one-fourth, or a four anna proportion of the total demand of the zemindar, according to the kistbundy, calculated from the commencement of the year to the last day of Kartick.—*Ibid, Cl. 3.*

Notice as above for  
sale the first of Aug-  
ghun.

If arrear be not less  
than one-fourth of  
demand.

Preamble

328. Whereas it has been omitted to provide in the rules of Regulation 8, 1819, whether, in case the proprietor of an estate paying revenue to Government should desire to bring to sale a saleable tenure of the nature defined in Clause first, Section 8 of that Regulation, for the realization of arrears of rent due thereupon, by any legal process other than that prescribed by the second and third clauses of the said section, such sale should be made in the public manner provided for the periodical sales therein described; and whereas it is consonant with justice, and was intended by the said Regulation, that, in every case of the sale of such tenures for arrears of the zemindar's rent the sale should be public, for the security of the interests of the owner of the tenure sold; which object can in no manner be duly secured, except the sales to be so made be conducted by an officer of Government in the same manner as the periodical sales provided for by Section 8 of the said Regulation, the following additional rule has accordingly been passed by the Governor General in Council, to take effect from the date of its promulgation, within the several districts of Bengal including Midnapore.—*Reg. 1, 1820, Sect. 1.*

The rules of reg 8,  
1819, for periodical  
sales for the zemun-  
dar's arrears of rent  
extended to other  
sales for rent.

329. Whenever the proprietor of an estate paying revenue to Government shall desire to cause any tenure of the nature of those described in clause 1, Section 8, Regulation 8, 1819, to be sold for arrears of rent due to him on account thereof, and shall, under any summary process authorized by the general Regulations, have acquired the right of causing such sale to be made, the same shall be conducted, after application from the

zemindar by the Register or acting Register of the Zillah or City court, or in his absence by the person in charge of the office of Judge of the district, in the mode prescribed by Regulation 8, above quoted for periodical sales.—*Ibid*, Sect. 2, Cl. 1.

330. Ten days' notice shall be given before proceeding to sale, by proclamation, to be stuck up at the cutcherry of the court, and at that of the Collector of the district. —*Ibid*, Cl. 2.

Ten days' notice to be given by proclamation.

331. The rules of Sections 9, 11, 13, 15, and 17, Regulation 8, 1819, are extended to all sales made after the manner herein provided.—*Ibid*, Cl. 3.

Sec. 9, 11, 13, 15 & 17, reg. 8, 1819, extended to sales under this regulation

332. With regard to the other point, whether lakhirajdars can have the advantage of Section 8, Regulation 8, 1819, the Court observe, that the words of that section expressly specify "zemindars, that is, proprietors under direct engagements with Government," and that, therefore, the provisions of it must be considered restricted to the persons specified.—*Con.* 313, 5th May 1820.

Lakhirajdars cannot avail themselves of the rules of sec. 8, reg. 8, 1819.

333. The Sudder dewanny adawlut have had before them your letter of the 31st ultimo, and direct me to state in reply, that according to the spirit of Section 8, Regulation 8, 1819, as the day for the presentment of petitions on the part of zemindars for the next half-yearly sale falls in the vacation, it must be deemed commutable for the next day after the opening of the Civil court, and the sale must not take place until a month from and after such day. It will be requisite that you should give due notice of this construction in the district under your charge.—*Con.* 329, 15th Sept. 1820

If the day for the presentation of petitions by zemindars for the sale of putnee tenures falls on a vacation, it should be presented on the first day of business after that.

334. Can the zemindars, entitled to obtain periodical sales of certain descriptions of tenures for arrears of revenue under the above section and Regulation, transfer that right to their ijaradars, or is the proprietor of an estate paying revenue direct to Government, debarred from the advantages of Section 8, by the circumstance of having let his estate in farm.—In reply, I am directed to communicate to you the opinion of the Court, that a zemindar is not entitled to transfer to an ijaradar his right to obtain periodical sales of putnee tenures for arrears of revenue, under Regulation 8, 1819, the individuals specified in the section above quoted, as entitled to apply for periodical sales, being proprietors under direct engagements with the government.—*Con.* 461, 7th Sept. 1827.

A zemindar cannot transfer to an ijaradar his right of obtaining periodical sales of putnee tenures under reg. 8, 1819

335. On the question, as to whether a farmer under the Court of Wards has the right of bringing to sale dependant *talooks* under Regulation 8, 1819, the Court, on the 4th September, 1829, observed, that the Collector, (or more strictly speaking the Court of Wards,) stands in the place of the zemindar; and that a surburakar, appointed by the Collector, has the same powers as a surburakar appointed by the zemindar (were he of age) would have, and is answerable to the Collector for every thing he does in the management of the estate; and that a farmer, under a lease from the Collector, being responsible to the Collector for nothing but the rent he has agreed to pay, stands exactly in the same predicament as a farmer under a lease from a zemindar; and that it had been held by the Court, (see Construction, dated 7th September, 1827,) that farmers holding of proprietors cannot exercise the privilege given to the latter by Section 8, Regulation 8, 1819. The reason which induced the Court to adopt that construction was, that the enactment cited, specifying only proprietors, could not be held to give the large powers it confers to any but proprietors.—*Con.* 523, 4th Sept. 1829.

A farmer under the court of wards has no authority to bring putnee tenures to sale, as above

Register to conduct the sale.

Rules for bidding, &c.  
15 per cent to be paid on sale.

Or lot to be re-sold after two hours

Failing remainder, resale on ninth day after.

A *durputneedar* may bring the *putnee* tenure, if he has not fraudulently withheld any balance from his *putneedar*

Forms to be observed on selling

Zemindar to certify balance

And service notice in mofussil

(On his own responsibility.

336. All sales of saleable tenures applied for under the rules of this Regulation, shall be made in public cutcherry by the Register or acting Register of the Civil court, or in his absence by the person in charge of the office of Judge or of Magistrate of the district, within which the lands may be situated; the land shall be sold to the highest bidder, and every one not the actual defaulter shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen per cent. of the purchase money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours. If the fifteen per cent. be not paid in cash or in notes of the Bank of Bengal, within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be re-sold on the same day, and if the remainder of the purchase money be not paid by noon of the eighth day, notice shall be given of resale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sudder station of the zillah, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen per cent. already made, (which shall be in such case regarded as part of the proceeds of the sale.) and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil courts.—*Reg. 8, 1819, Sect. 9.*

337. Held, that under Section 9, Regulation 8 of 1819, a *durputneedar* may buy the *putnee* tenure, if he do not fraudulently withhold any balance due from him to his *putneedar*.—*S. D. A. Sel. Rep. 20th Jan. 1844, vol. 7, p. 153.*

338. At the time of sale the notice previously stuck up in the cutcherry shall be taken down, and the lots be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the zemindar with a particular statement of the payments made up to the day of sale, an account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the mofussil, nor shall any lot be put up to sale until the statement produced shall have been inspected and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read, the observance of which forms shall be recorded in a separate roobukaree to be held upon each lot sold. If the sale be of the description provided for in the third clause of Section 8 of this Regulation the kistbundy of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained. The zemindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect, except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.—*Reg. 8, 1819, Sect. 10.*

339. Such parts of Regulation 8, 1819, and Regulation 1 of 1820, as declare that the sale of putnee talooks and other saleable tenures, shall be conducted by the Register, or acting Register, or in their absence by the Judge or Magistrate, and which require the Judge to perform other acts preparatory to, or connected with, the sale of such talooks or other saleable tenures, are hereby modified, and such sales shall hereafter be made, and other acts aforesaid be performed by the Collector or Deputy Collector of land revenue, or head assistant to the Collector or Deputy Collector, subject to an appeal to the Commissioner of revenue for the division, on the ground of the irrelevancy of the Regulation, as in other cases of a summary nature provided for in Section 4, Regulation 8, 1831.—*Reg. 7, 1832, Sect. 16, Cl. 1.*

Duties performed by registers or judges under reg. 8, 1819 & 1 of 1820, transferred to the revenue officers.

340. I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that petitions on the part of the defaulting putnee talookdars, whose tenures have been sold for arrears under Regulation 8 of 1819, previous to the enactment of Regulation 7 of 1832, to receive the excess of the purchase money above the amount of the balance for which the tenure was sold, should be presented to the Judge who holds the surplus in deposit—*Con. 795, Cal. C. 14th June, West. C. 19th July 1833.*

To whom petitions of defaulting putnee talookdars whose tenures have been sold for rent under reg. 8, 1819, previous to the passing of reg. 7, 1832, to receive the excess of purchase money, must be presented.

341. I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of your letter of the 14th instant, requesting the Court's construction of certain points connected with the sale of putnee talooks by public auction, under Section 9, Regulation 8 of 1829. The Court are of opinion, that if the auction purchaser do not pay the balance of the purchase money by noon of the eighth day from the day of sale, he forfeits by his failure the fifteen per cent. deposited by him on the day of sale, and all right to benefit by an increased price at a second sale, while he will be answerable for any deficiency; and that the forfeited percentage is to be considered as part of the proceeds available for the benefit of the defaulter. Should this last be sufficient to cover the balance claimed by the zemindar, no further sale need take place; otherwise (if the balance be not previously paid by the defaulter) the talook must be re-sold on the ninth day, and any surplus of the forfeited percentage and of the proceeds of the second sale, after liquidating the zemindar's demand, must be paid to the defaulting talookdars.—*Con. 580, 24th Dec. 1830.*

Consequence of the purchaser's neglecting to pay the balance by noon of the 8th day after the sale.

The forfeited percentage goes to the defaulter.

Case in which the talook must be resold on the 9th day. Disposal of the purchase money.

342. I am directed by the Court to acknowledge the receipt of your letter of the 15th March last, and its enclosure, requesting to be informed whether a Judge or Register is competent to sell talooks under the provisions of Clause 4, Section 18, Regulation 8, 1819, in satisfaction of summary decrees for balance of rent.—In reply, I am directed by the Court to observe that all talooks, in which the interest of the occupant is saleable, may be sold for an arrear of rent accruing thereon, and that the sale should be made by the Register, or in his absence by the Judge or Magistrate (now by the Collector under Section 16, Regulation 7, 1832,) in the same manner as putnee and durputnee talooks, under the provisions of Sections 9 and 16 of Regulation 8, 1819.—*Con. 695, West. C. 4th, Cal. C. 25th May 1832.*

All talooks in which the interest of the occupant is saleable, may be sold. Sale to be made by the collector.

343. The following question arose out of a reference made by the Judge of Beerbhoom. The holder of a putnee tenure having defaulted, his tenure was brought to sale; the defaulter himself became the purchaser in a fictitious name, in opposition to the provisions of Section 9, Regulation 8, 1819, and ousted the durputneedar. In such case what remedy has the latter?

A putneedar having purchased in a fictitious name, the talook sold by auction for his default cannot cancel the under-

tenures. Remedy of the holder of such tenure.

Can he sue for recovery of possession of his tenure, or is he restricted to the remedies pointed out in Section 13, and Clause 5, Section 17 of the abovementioned Regulation?—It was decided by the Government, in concurrence with the Calcutta Court, that as the actual defaulter is prohibited from purchasing the putnee tenure, a fictitious purchase, contrary to the law, cannot confer upon him the right of cancelling the under-tenures; and that consequently the holder of any such tenure, in the event of the power of cancelling having been exercised, has his remedy in an action for recovery of possession against the fictitious purchaser, laying his suit at the value at which he estimates his interest in the property.—*Con.* 1243, 16th Aug. 1839.

Sale not to be stayed except the arrear claimed be lodged

But action to lie for its reversal

344. Should the balance claimed by a zemindar, on account of the rent of any under-tenure, remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve in the manner provided for in Sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged. It shall however be competent to any party desirous of contesting the right of the zemindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zemindar for the reversal of the same and, upon establishing a sufficient plea, to obtain a decree with full costs and damages. The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the court shall be careful to indemnify him against all loss, at the charge of the zemindar or person at whose suit the sale may have been made.—*Reg.* 8, 1819, *Sect.* 14, *Cl.* 1.

Summary investigation may be applied for by defaulter.

But not to stay sale without deposit

345. In cases in which a talookdar may contest the zemindar's demand of any arrear, as specified in the notice advertised, such talookdar shall be competent to apply for a summary investigation, at any time within the period of notice; the zemindar shall then be called upon to furnish his kubooliyut and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale. Such award, if so made, will of course regulate the ulterior process; but if the case be still pending, the lot shall be called up in its turn, notwithstanding the suit; and if the zemindar or his agent in attendance insist on the demand, the sale shall be made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash or in Government securities, or in notes of the Bank of Bengal, by the talookdar contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy, but by a regular action for damages and for a reversal of the sale.—*Ibid.*, *Cl.* 2

Under-tenures how to be brought to sale for arrears

346 Under-tenures held under engagements similar to those executed between the zemindar and putneedar, having been declared not to be voidable for an arrear of the rent fixed upon them in perpetuity, it will be necessary that the person to whom the said rent may be payable, should (in case he be desirous of holding the tenure answerable in the manner provided for by stipulation in the deeds interchanged,) proceed according to the rules of Section 15, Regulation 7. 1799, and the general Regulations, to have the sale effected at the end of the year, in the same manner as heretofore.—But it is hereby provided, that every such sale shall be public, and be conducted by the Register or acting Register of the Zillah court, or in his absence, by the person in charge of the office at

Judge or of Magistrate, under the rules of this Regulation, as far as the same be applicable; ten days' notice shall be given of such sales, by advertisement, to be stuck up at the cutcherries of the court and Collector.—*Reg. 8, 1819, Sect. 16.*

347. The sale of a putnee talook, under attachment by order of the Civil court, cannot for that reason be deferred, in the event of its becoming liable to sale under Regulation 8 of 1839, for arrears due to the zemindar.—*Rep. Sum. Cases, 20th Sept. 1844, p. 61.*

The sale of a putnee talook by order of the civil court cannot be deferred if it becomes liable to sale by the zemindar for arrears under reg. 8, 1819.

348. The attachment, by order of the Civil courts, of a putnee talook does not affect the right of the zemindar to levy his rent by sale.—*Rep. Sum. Cases, 26th Oct. 1846, p. 86.*

The attachment of a putnee tenure does not affect the right of the zemindar to levy his rent by sale.

349. The Court having had before them the petition from the Rajah, which was forwarded with your letter of the 25th ultimo, and the object of which was to obtain an order from the court that sales, under Section 9, Regulation 8, 1819, of *putnee* tenures in the Rajah's *zemindary*, should be made by the Register of Burdwan at that station, even though the tenures should be situated in other *zillahs*, I am directed to communicate to you, that as the provisions of the Regulation quoted appear to the Court to require that such sales should be made by the Register of the district where the tenures are, and at the *cutcherry* of such district, the Court are not competent to give a contrary order.—*Con. 326, 1st Sept. 1820.*

The sale of putnee tenures must be made by the register [now the collector] of the district in which it is situated, and in no other.

350. The Court of Sudder dewanny adawlut have had before them your letter, dated the 19th instant, requesting to be informed by whom the public sales of *putnee* and *durputnee* tenures in execution of decrees are to be conducted. In reply, I am desired to communicate to you, that in the opinion of the Court such sales should be conducted by the Collector.—*Con. 319, 26th April 1822.*

Idem.

351. The Register of the Zillah court is not amenable to a civil action for acts performed in his official capacity in selling *putnee* tenures; but the person aggrieved may obtain redress by an action against the zemindar, whose allegation of arrears caused the sale, or the purchaser, or both.—*Con. 410, 8th Dec. 1826.*

The register [now the collector] is not amenable to the civil courts for official acts in the sale of putnee tenures. The person aggrieved may obtain his remedy by action against the zemindar who caused it to be sold.

352. At a Court of Sudder dewanny adawlut, held on the 27th day of November, 1829, it was determined, that according to the intent and meaning of Regulation 7, 1799, Regulation 8, 1819, and the constructions of this Court, bearing date the 27th of June and the 14th of November, 1809, a *sudder putneedar* cannot exercise the same authority as is possessed by a *zemindar*, with respect to his under-tenants, of selling the tenure of his *durputneedar* without previous application to the Court.—*Con. 531, 27th Nov. 1829.*

A *sudder putneedar* cannot exercise the authority possessed by a *zemindar* of selling the tenure of his *durputneedar*, without the order of the court.

353. I am directed by the Court to forward to you the accompanying copy of a letter from the Judge of zillah Dacca, dated the 21st ultimo, No. 313, requesting to be informed, in consequence of a difference of opinion with you, whether "lands paying revenue can be sold in satisfaction of decrees, being putnee talooks and other salable tenures as contemplated in Section 16, Regulation 7, 1832, without a report under Regulation 45, 1793, Section 2, to the Commissioner of revenue."—The Court direct me to refer you to Construction No. 349, of the printed Constructions, and to observe that as the public sale of putnee and durputnee tenures in execution of decrees must be conducted by the Collector, the report required by

Putnee and durputnee tenures must be sold in execution of decrees by the collector. The report required by sec. 2, reg. 45, 1793, must be made to the revenue commissioner.

Section 2, Regulation 45, 1793, must be made to the Commissioner of revenue.—*Con.* 897, 5th Sept. 1834.

### SECTION XXXVIII.

*Miscellaneous Rules—Putnee Talooks—Principle on which the Tenure is to be sold, and power of Under-Tenants to stay the Sale.*

Tenure to be sold  
free of incumbrance  
by act of defaulter

354. It is hereby declared, that any talook or saleable tenure that may be disposed of at public sale under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor his representatives, or assignees: unless the right of making such incumbrances shall have been expressly vested in the holder by a stipulation to that effect in the written engagements under which the said talook may have been held. No transfer by sale, gift or otherwise, no mortgage or other limited assignment shall be permitted to bar the indefeasible right of the zemindar to hold the tenure of his creation answerable in the state in which he created it for the rent, which is in fact his reserved property in the tenure; except the transfer or assignment should have been made with a condition to that effect, under express authority obtained from such zemindar.—*Reg.* 8, 1819, *Sect.* 11, *Cl.* 1.

No underlease to  
stand after sale

355. In like manner, on sale of a talook for arrears, all leases originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred: the possessors of such interests must consequently lose the right to hold possession of the land, and to collect the rents of the ryots; thus having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.—*Ibid.*, *Cl.* 2.

Exception in favor  
of bonâ fide engage-  
ments with ryots

356. Provided nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a talook or other saleable tenure intermediate between the zemindar and actual cultivators, to eject a khondkhist ryot, or resident and hereditary cultivator, nor to cancel bonâ fide engagements made with such tenants by the late incumbent, or his representative, except it be proved in a regular suit to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.—*Ibid.*, *Cl.* 3.

Above rule to take  
effect retrospectively

357. The rules of the preceding section being declaratory of the principle to be observed on all occasions, wherein saleable tenures are made responsible for the zemindar's reserved rent, will equally apply to the case of talooks heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognized and in use in the district at the time of selling. Nothing however herein contained shall operate to

Proviso

the prejudice of any agreement, express or implied, now subsisting between the purchaser of a talook and the lessees of his predecessor. Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a talookdar of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the talookdar in favour of the zemindar, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the estate in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.—*Reg. 8, 1819, Sect. 12.*

But not to apply to private transfers.

358. A. asserted a right to hold an inferior putnee, as part of a sudder putnee, the whole of which had been acquired by B. from the zemindar, under a sale preceded by an award of arrears, against the apparent sudder putnedar, and by an auction. On defect of clear evidence to the sub-division and therefore to the distinct tenancy-in-chief of the person from whom A. held, ruled that his tenure could not be protected from the operation of Section 12, Regulation 8, 1819.—*S. D. A. Sel. Rep. 30th Aug 1830, vol. 5, p. 64.*

Particular case decided by the S. D. A. in reference to sec 12, reg 8, 1819, as above.

359. With reference to the injury that may be brought upon the holder of a talook of the second degree by the operation of the preceding rules, in case the proprietor of the superior tenure purposely withholds the due from himself to the zemindar, after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such talookdars the means of saving their tenures from the ruin that must attend such a sale, and the following rules have accordingly been enacted for this purpose.—*Reg. 8, 1819, Sect. 13. Cl. 1.*

Reason for allowing under-tenants a means of staying sale

360. Whenever the tenure of a talookdar of the first degree may be advertised for sale in the manner required by the second and third clauses of Section 8 of this Regulation, for arrears of rent due to the zemindar, the talookdars of the second degree, or any number of them, shall be entitled to stay the final sale, by paying into court the amount of balance that may be declared due by the person attending on the part of the zemindar on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and should the amount lodged be sufficient, the sale shall not proceed, but after making good to the zemindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.—*Ibid, Cl. 2.*

Manner of doing so.

By lodging the advertised balance

361. If the amount so lodged shall be rent due by the inferior talookdar to the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or them by the proprietor of the advertised tenure, on account of the year or months for which the notice of sale may have been published.—*Ibid, Cl. 3.*

In case of rent due being lodged, credit to be given.



In case of advance from private funds.

362. If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the talook so preserved shall be the security to the person or persons making the advance, who shall be considered to have a lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto. If the defaulter shall desire to recover his tenure from the hands of the person or persons, who by making the advance may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon repayment of the entire sum advanced, with interest at the rate of twelve per cent. per annum, up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realized from the usufruct of the tenure.—*Reg. 8, 1819, Sect. 13, Cl. 4.*

To have the effect of mortgage.

Defaulter how to recover possession.

A *durputneedar* cannot be compelled by the civil courts to pay the rents of the putnee tenures to the zemindar.

On the forfeiture of a putnee tenure for arrears of rent, the *durputnee* tenures cease, though the holders are not defaulters.

The rights of the holders of putnee tenures of the second and lower degrees do not cease on the resignation of the *putneedar*, but only by a public sale for arrears.

363. A Civil court cannot compel a *durputneedar* to pay the rents of the *putnee* tenure due to the proprietor—*S. D. A. Sel. Rep. 21st Sept. 1837, vol. 6, p. 183.*

364. On the forfeiture of a putnee tenure for arrears of rent, the *durputnee* tenures under it cease also, though the holders of them be not defaulters, and though, subsequently to the default of the *sudder putneedar* the zemindar may have required them to pay their rents into his catcherry.—*S. D. A. Sel. Rep. 25th Sept. 1826, vol. 1, p. 179.*

365. The right of the holders of *putnee talooks* of the second and lower degrees in the zemindary of Bundwan, are not liable to be cancelled by the resignation of the *putneedar* who granted the *talook*. It can only be cancelled by a public sale for arrears of revenue.—*S. D. A. Sel. Rep. 21st Dec. 1819, vol. 2, p. 325.*

## SECTION XXXIX.

### Miscellaneous Rules—Putnee Talooks—Mode of obtaining Possession of Talooks after Sale

Rules for purchaser obtaining possession.

366. So soon as the entire amount of the purchase money shall have been paid in by the purchaser, at any sale made under this Regulation such purchaser shall receive from the officers conducting the sale, a certificate of such payment. The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the catcherry of the zemindar, and upon furnishing security, if required, to the extent of half the jumma or annual rent, he shall receive the usual *umuldustuk*, or order for possession, together with the notice to the ryots and others to attend and pay their rents henceforward to him. The zemindar shall also be bound to furnish access to any papers con-

Zemindar to give transfer on security being furnished, if required.

nected with the tenure purchased, that may be forthcoming in his cutcherry, and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished, or tendered, on requisition, the new purchaser shall be entitled to apply direct to the court, and he shall receive the orders for possession, and shall be put in possession of the lands by means of the nazir, in the same manner as possession is obtained under a decree of court. provided however, that if the delay be on account of the zemindar's contesting the sufficiency of the security tendered, the rule contained in Section 6 of this Regulation shall be observed.—*Reg. 8, 1819, Sect. 15, Cl. 1.*

Remedy in case of delay

Proviso

367. When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil court, for the aid of the public officers in obtaining possession of his just rights. A proclamation shall then issue under the seal of the court and signature of the Judge, declaring, that the new incumbent having, by purchase at a sale for arrears of rent due to the zemindar, acquired the entire rights and privileges attaching to the tenure of the late talookdar, in the state in which it was originally derived by him from the zemindar, he alone will be recognized as entitled to make the zemindary collections in the mofussil, and no payments made to any other individual will on any account be credited to the ryots or others in any summary suit, for rent brought under the provisions of Section 15, Regulation 7, 1799, or in any application to stay process by distraint, under the rules of Regulation 5, 1812, or on any other occasion whatever, when the same may be pleaded — *Ibid. Cl. 2.*

In case of opposition,

Proclamation to issue from court

368. Should the late incumbent, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the Police officers, and of all other public officers who may be at hand, and capable of affording assistance, shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.—*Ibid. Cl. 3.*

In case of further opposition, police and all public officers to aid

## SECTION XL

*Miscellaneous Rules—Putnee Talooks—Rules for disposing of the Purchase Money of Sales for Arrears under this Regulation.*

369. The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.—*Reg. 8, 1819, Sect. 17, Cl. 1.*

Rules for disposing of the purchase money of sales for arrears under this reg.

One per cent. to be carried to the account of government.

370. One per cent. shall first be deducted from the net proceeds realized, and shall be carried to the account of Government, for the purpose of meeting the expence of any extra establishments which it may be necessary to maintain, for carrying into effect the provisions of this Regulation.—*Reg. 8, 1819, Sect. 17, Cl. 2.*

How the commission of one per cent. for govt. must be levied—What shall be reckoned a part of the gross proceeds

371. The commission of one per cent. leviable for the use of Government under Clause 2, Section 17, Regulation 8, 1819, should be levied on the net proceeds of the sale whatever that may be; the several deposits of 15 per cent. where there be more than one sale [together with the difference between the first, second and third sales, claimable from the first and second purchasers, if any sum on this account should have been realized] being reckoned as part of the gross proceeds.—*Can. 191, 9th Jan. 1829.*

Zemindar's balance and expenses to next made good

372. The balance on account of which the sale may have been made, shall next be made good in full (with interest and all charges incurred in bringing the talook to sale) to the zemindar or other person to whom the same may be due: provided however that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year,) shall be included in the demand to be thus satisfied,—such antecedent balances, if the zemindar shall have omitted to avail himself of the process within his reach, for having them satisfied at the time, will have become in fact mere personal debts of the individual talookdar, and must be recovered in the same way as other debts by a regular suit in the court.—*Reg. 8, 1819, Sect. 17, Cl. 3.*

But not antecedent balances

Remainder to be sent to the collector's treasury, to answer claims of under-tenants

373. Any excess that may remain after satisfying the demand of the zemindar, in the manner above described, shall be forthwith sent by the officer conducting the sale to the treasury of the Collector or assistant Collector of the district, to be there held in deposit to answer the claims of the talookdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the talook sold, or on any part of it.—*Ibid. Cl. 4.*

Under-tenants free to prosecute for the price of their interest or compensation

374. It shall be competent to any one conceiving himself to possess such an interest, to bring forward his claim to the price he may have paid for the same or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale. If the court shall on investigation consider the plaintiff's claim to be an equitable one, the court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances. If there be more claimants than one, payment shall not be made from the deposit, until the whole of the claims be settled; and in case the value assessed upon the whole should exceed the amount in deposit such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.—*Ibid. Cl. 5.*

Payment how to be made from deposit, if many claims.

Action not to lie if the under-tenant be himself in arrear at the time of sale.

375. Provided however, that no talookdar of the second degree, or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled

by sale of the superior talook, except after exhibiting proof, that the whole amount of the rent demandable from himself, has been paid or lodged for the purpose, prior to the date of sale.—*Reg. 8, 1819, Sect. 17, Cl. 6.* \*

376. Should no claims upon the purchase money of a talook sold as above, be brought forward by any under-tenants or assignees, within the period of two months from the date of sale, or should the amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold, shall be at liberty to position the court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the seal of the court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and upon exhibiting such certificate to the Collector, the amount set free thereby shall be paid to his receipt. In the same manner upon executing a decree passed in favor of any under-tenants or assignees, they shall receive certificates under the seal of the court, declaring the amount adjudged to them out of the deposit, and upon exhibiting these certificates, the amount shall be paid severally to their receipts by the Collector. —*Ibid. Cl. 7.*

In case of no claim in two months, or only partial claims, defaulter to receive the excess unclaimed.

377. It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof, on substituting government securities, bearing interest, in lieu of the money so held in deposit: such securities to be taken at the rate of discount or premium of the day, as shown by the Government Gazette last received. —*Ibid. Cl. 8.*

Any party interested may substitute government securities for cash in deposit

## SECTION XL.

### *Miscellaneous Rules—Putnee Talooks—Decision of the Sudder Court in reference to Putnee Tenures.*

378. Held, that it is lawful for a zemindar to conclude a settlement with other individuals for a *putnee talook* with the permission of the Zillah court, the sudder putneedar having fallen in arrears, though his shares, whose names are not recorded in the zemindary record, had deposited their quota of the arrears in the treasury of the zillah. but they were declared at liberty to sue the sudder putneedar for any damages they might have sustained by his default.—*S. D. A. Sel. Rep. 29th Dec. 1827, vol. 4, p. 295.*

Case in which a zemindar may conclude a settlement with other individuals for a putnee tenure.

379. In 1810, A., the *zemindar*, proceeded summarily, under Regulation 7, 1799, against B., his *putneedar*, for a defined balance of rent. The Judge found something due, but not able to make a specific award, he referred A. to a civil action; providing, however, that he might sell the under-tenure, and settle with C.: A. did settle with C. at a diminished rent. He then sued B. for a balance of rent, after setting off the price received for the tenure. Part of his claim was dismissed in 1812 as not exigible, and part awarded. In 1823, B. sued A. and C. to recover the *putnee* tenure, resting his right on pleas by which he failed to repel the claim of A. in 1812. Held that the claim was not cognizable.—*S. D. A. Sel. Rep. 9th Jan. 1832, vol. 5, p. 157.*

Where A. on the default of B. settled with C. at a diminished rate, and then sued B. for arrears & obtained a decree in part, and B. in the end sued A. and C. to recover the putnee tenure, the claim was not recognized.

380. A. and B. purchase property from C. under condition not to re-sell to any one but C. Ruled that the grant of *putnee* talook of a part of the property by A. and B. to D., a stranger—

When A. and B. purchase property from C. on condition

not to sell it to any one but C, they cannot grant a putnee talook of a part of it to D.

A purchaser is liable for the putnee tenure, as long as he holds possession under the purchase.

er, is a violation of their part of the engagement, and as such was set aside.—*S. D. A. Sel. Rep. 1st March 1836, vol. 6, p. 56.*

381. A. purchases an estate from B. It subsequently appears that the whole estate did not belong to B., but that a fractional part of it was held by him on *putnee*. Held, that the purchaser is liable for the *putnee* tenure as long as possession is held under the purchase.—*S. D. A. Sel. Rep. 21st Sept. 1837, vol. 6, p. 183.*

The purchaser of a putnee tenure by decree of court has no claim to land situated within it which the zemindar had granted rent-free, to a third party, before he created the putnee tenure.

382. The purchaser at a sale, in execution of a decree of court, of the rights and interests of a *putnedar*, has no just claim to land situated within the *putnee* talook, which had been granted by the zemindar rent-free to a third party, before the date of the execution of the *putnee* and of which the *putnedar* never had possession.—*S. D. A. Sel. Rep. 5th Jan. 1840, vol. 6, p. 281.*

Case in which the *S. D. A.* decreed against the plaintiffs who sued for the recovery of their due putnee tenure, lost by the defendants allowing the putnee talook to be sold.

383. In an action for recovery of the price of a *durputnee* tenure lost to the plaintiffs by the defendant having allowed the sale of his *putnee* tenure, the Sudder dewanny adawlut decreed against plaintiffs—1st, because the plaintiffs were themselves the purchasers of the *putnee* tenure; and 2d, because, as *durputnedars*, they were in balance at the time of the sale of the *putnee* tenure (see Clause 6, Section 17, Regulation 8 of 1819)—*S. D. A. Sel. Rep. 20th Jan. 1844, vol. 7, p. 154.*

When a plaintiff purchased a putnee tenure from the defendant, and a portion was afterwards decided to be *lakhiraj*, the seller not responsible for the loss sustained by the purchaser.

384. Plaintiff purchased a *putnee* from defendant: subsequently a portion was decided to be *lakhiraj*. Plaintiff sued for a corresponding reduction of the *putnee* jumma. The Court of Sudder dewanny adawlut held that under the circumstances the seller was not responsible for the loss sustained by the purchaser.—*S. D. A. Sel. Rep. 7th Aug. 1844, vol. 7, p. 179.*

## SECTION XLII.

### *Hidden Treasure*

Print

385. Whereas the provisions of the Mahomedan and Hindoo laws respecting the discovery of hidden treasure differ materially, and whereas it is deemed expedient that an uniform principle should be established for the guidance of persons by whom hidden treasure may be discovered, the following provisions are enacted, to be in force as soon as promulgated throughout the provinces immediately subordinate to the Presidency of Fort William—*Reg. 5, 1817. Sect. 1.*

Hidden treasure under what circumstances and conditions to become the property of the finder.

386. Whenever any hidden treasure, consisting of gold or silver coin, or bullion, or of precious stones, or other valuable property, may be found buried in the earth, or otherwise concealed within any part of the territory subject to this Presidency; and after due notification, the owner thereof may not be discoverable; such hidden treasure shall become the property of the person or persons who may have found the same, provided it shall not exceed in amount or value, the sum of one lakh of sicca rupees; and provided the finder or finders shall have conformed to the rules prescribed in this Regulation.—*Ibid. Sect. 2.*

387. Whenever any person may find hidden treasure, of the description stated in the foregoing section, he shall give immediate notice thereof to the Judge of the zillah or city in which the treasure may have been found; and shall at the same time deposit the treasure in the Zillah or City court, with an exact inventory thereof.—*Reg. 5, 1817, Sect. 3.*

The finder how to proceed on the discovery of the hidden treasure.

388. The zillah or city Judge receiving a deposit as above directed, shall return a receipt for the treasure deposited, after causing the same to be carefully compared with the inventory; and shall issue a public notification in the current languages of the country, to be published and affixed in his own cutcherry, and in the cutcherry of the Collector of the district, requiring all persons who may have any claim of right to the treasure in deposit, to attend in person, or by vakeel, and prove their title thereto, within six months from the date of the notice.—*Ibid, Sect. 4.*

Duty of the zillah or city judges in such cases.

Notification to be issued, and period allowed to claimants to bring forward their claims.

389. It shall be the duty of the Collectors of land revenue acting under the instructions of the Board of Commissioners, or the Commissioner in Behar and Benares, or the Board of Revenue, to bring forward and to support, in conformity with the foregoing provision, any claim of right which Government may appear to possess to such treasure. In the event of any claim of right being preferred either on the part of individuals or of Government, pursuant to the prescribed notification, the Judge shall institute a summary enquiry into the claim preferred; and if the title of Government or other person so claiming the treasure in deposit, or any part thereof, be clearly established, he shall adjudge the same accordingly, subject to reimbursement of all expence incurred by the finder of the treasure, as well as to such compensation for the discovery of it as may, in each case, appear just and reasonable.—*Ibid Sect. 5.*

Collectors of land revenue to bring forward any claim of right which govt. may appear to possess to such treasure.

Summary enquiry to be instituted by the judges of zillah and city courts.

How judgment to be awarded by the judge.

390. If no claim of right be preferred either by Government or by an individual within the period limited by the notification directed in Section 1 of this Regulation, or if the claim or claims so preferred, shall not on a summary enquiry appear to be well founded; and the amount or value of the hidden treasure found at the same time, or in the same place, shall not exceed one lack of sicca rupees; the zillah or city Judge shall adjudge the same to the person or persons who may have discovered the treasure, and deposited it in the Zillah or City court, as required by Section 2, subject only to the actual expence which may have been incurred in adopting the measures prescribed by this Regulation.—*Ibid, Sect. 6.*

What judgment to be passed by the judge in cases in which no claim shall be preferred either by govt. or by individuals, & the amount may not exceed one lack of sicca rupees.

391. If the amount or value of any hidden treasure found at the same time, or in the same place, shall exceed one lack of sicca rupees, and no claim of right thereto be established, judgment shall be given according to the preceding section in favor of the person or persons who may have discovered and deposited the treasure, to the amount of one lack of sicca rupees; and the excess above that sum shall be declared at the disposal of Government.—*Ibid, Sect. 7.*

Decision to be passed by the judge in cases in which the amount of treasure shall exceed one lack of sa rs and no claim of right thereto be established.

392. If any person discovering hidden treasure of the description specified in Section 2 of this Regulation, shall not within one month after finding the same, give notice to the Judge of the Zillah or City court, in conformity with Section 4, and make the

Persons discovering hidden treasure who shall neglect to give due notice within one month, shall

be considered to have forfeited all right and title to the treasure and compensation.

deposit hereby required, he shall be considered to have forfeited all right and title to the treasure; as well as all claim to a reimbursement of expence, compensation or reward under the provisions of this Regulation; and the treasure so clandestinely withheld from public investigation, shall, on a summary suit by any subsequent claimant of right, and proof of a just title thereto, be adjudged to the legal owner with interest and costs; or if no private claim be established, shall on the application of the vakeel of Government under instructions from the Board of Revenue, or the Board of Commissioners in the western provinces, or the Commissioner in Behar and Benares, be liable to confiscation to Government.—*Reg. 5, 1817, Sect. 8.*

The summary decisions of the judges of the zillah and city courts shall be open to a summary appeal to the provincial courts.

393. The summary decisions of the Judges of the Zillah or City courts, which may be passed under this Regulation, shall be open to a summary appeal to the Provincial courts, under the general rules in force relative to summary appeals.—*Ibid, Sect. 9.*

The decision of two or more judges of the provincial courts on such appeals, to be final.

Provision for admitting a second summary appeal before the S. D. A.

394. The decisions of two or more Judges of the Provincial courts on such appeals shall be final; unless the Court of Sudder dewanny adawlut should on the face of the decree, or on inspection of any documents exhibited with it, see just and sufficient ground for admitting a second summary appeal to that court, in which case only such further appeal may be admitted, and proceeded upon under the general rules in force for summary appeals.—*Ibid, Sect. 10.*

### SECTION XLIII.

*Registry of Deeds—Establishment of the Office—and the Deeds which should, and which should not, be registered.*

An office for the registry of deeds to be established in each zillah and city.

To be superintended by the register of the zillah or city.

Oath

395. An office for the registry of deeds shall be established in each zillah, and in the cities of Patna, Dacca and Moorshedabad. The superintendence of the office shall be committed to the Register of the Court of Dewanny adawlut, who shall take and subscribe the following oath before the Judge of the zillah or city, previous to his entering on the execution of the duties of the office :—“ I, A. B., solemnly swear, that I will truly and faithfully execute the office of Register of deeds for the zillah or city of ———, and that I will neither, directly nor indirectly, derive any pecuniary or other benefit whatsoever from the said office, excepting such as is or may be allowed to me by this Regulation, or by any Regulation that may be hereafter passed by the Governor General in Council, and printed and published in the manner directed in Regulation 41, 1793. So HELP ME GOD.”—*Reg. 36, 1793, Sect. 2.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Conq. Prov. Reg. 17, 1803, Sect. 2.*

The office for the registration of deeds should be fixed at the sudder station of the district.

396. The Court are further of opinion, that the offices established for the registry of deeds, by Section 2, Regulation 36, 1793, should be fixed at the sudder station of the district.—*Con. 135, 19th Aug. 1813.*

[But see the subsequent enactment of Act 30, 1838.]

397. A civil Surgeon comes within the class of covenanted servants of the Company who, by Sections 3 and 4, Regulation 4, 1824, may officiate as Register of deeds.—*Con.* 611, 25th Nov. 1831.

A civil surgeon may be appointed register of deeds.

398. In modification of the rules contained in Regulation 4, 1824, relative to the registry of deeds, it is hereby declared that, whenever a zillah or city Judge may deem the appointment advisable, he shall, having previously obtained the consent of the Governor General in Council to that effect, be competent to make over to the Principal Sudder Ameen at his station the duty of registering deeds, subject to all the existing rules prescribed for that duty, and such Principal Sudder Ameen, while so officiating, shall receive the fees authorized by the Regulations for the performance of that duty.—*Reg.* 7, 1832, *Sect.* 4.

P. S. A. eligible to the duty of registering deeds

399. The Register is authorized and required to register memorials of the following deeds:—

Memorials of the following deeds to be registered.

Deeds of sale, or gift, of lands, houses and other real property.

Deeds of sale and gift of real property.

Deeds of mortgage on land, houses, and other real property, as well as certificates of the discharge of such incumbrances.

Mortgages and incumbrances and certificates of the discharge of them.

Leases and limited assignments of land, houses, and other real property, including generally all conveyances used for the temporary transfer of real property.

Limited assignments and temporary transfers

Wuscutnamahs or wills.

Wills

Written authorities from husbands to their wives to adopt sons after their (the husbands') demise.—*Reg.* 36, 1793, *Sect.* 3.—*Benares Reg.* 28, 1795, *Sect.* 2.—*Ced. and Cong. Prov. Reg.* 17, 1803, *Sect.* 3.

Authorities to women to adopt sons after the death of their husbands.

400. The person holding the office of Register of deeds for the conveyance of landed property, is likewise hereby authorized and required, from and after the 1st of January, 1813, corresponding with the 19th Pouse, 1219, Bengal era, the 14th Pouse, 1220, Fussely; the 20th Pouse, 1220, Willaity; the 14th Pouse, 1869, Sumbut; and the 27th Zeheza, 1227, Hijree, to register engagements contracted by indigo planters, whether Europeans or Natives, with the ryots and others for the delivery of the indigo plant.—*Reg.* 20, 1812, *Sect.* 3, *Cl.* 1.

Engagements contracted with indigo planters for delivery of indigo plant to be registered.

401. The person holding the office of Register of deeds, is likewise hereby authorized and required from and after the 1st of January, 1813, corresponding with the 19th Pouse, 1219, Bengal era; the 14th Pouse, 1220, Fussely; the 20th Pouse, 1220, Willaity; the 14th Pouse, 1869, Sumbut; and the 27th Zeheza, 1227, Hijree, to register bonds, promissory notes, and generally all obligations for the payment of money. Provided however, that such registry shall only be made on the application, in person or by representative, of the party by whom the said bonds, promissory notes, or other obligations may have been executed.—*Ibid.* *Sect.* 5, *Cl.* 1.

Registry of bonds, notes, or other money engagements

402. Held, that security bonds for the eventual payment of costs of suit, may be registered under the provisions of Section 5, Regulation 20, 1812.—*Con.* 1270, *Cal. C.* 10th Jan., *West.* C. 28th Feb. 1840.

Security bonds for the payment of costs may be registered.



Registers precluded from registering any deeds but those prescribed in the regulations. The register books to be of English paper and bound.

The judge cannot register any description of deed required to be registered by the register.

A register must refuse to register a deed drawn up on an improper stamp, but if the value of the stamp equal or exceed the regular stamp, the register cannot decline registering the deed.

Copies of deeds brought for registry, being intended merely for record, may be drawn up on plain paper.

A register cannot refuse to register a document merely because it is written in the Persian language.

Mode of procedure when a deed is brought for registry for the same land for which another deed, given by the same person, had previously been registered.

A deed of sale being brought to a register for registry, he, on a summary enquiry, ordered the sale to be set aside. This order the S. D. A. declared to be illegal.

Mooktarnamahs should not be registered, nor deeds

403. It is hereby declared, that the Registers are not warranted in registering deeds of any description, excepting those specified in Regulation 36, 1793, and Regulation 17, 1803, and in the present Regulation. The register books shall in future be uniformly made of English paper, and carefully bound.—*Reg. 20, 1812, Sect. 7.*

404. I am directed by the Sudder dewanny and Nizamut adawlut, to acknowledge the receipt of a letter from you, dated the 3d instant, with enclosure from the Register at your station; and in reply to communicate to you the opinion of the Court, that you are not authorized, under the Regulations, to register any description of deeds required to be registered by the Register, and the Court desire that you will discontinue the practice in future.—*Con. 135, 19th Aug. 1813.*

405. The only point upon which the Court deem it necessary to pronounce an opinion is, as to whether the Register was, or was not, competent to decline registering a deed brought to him for that purpose on paper not bearing the prescribed stamp; and on this point I am desired to observe with reference to the provisions contained in Clause 3, Section 6, Regulation 16, 1824, and Clause 1, Section 7 of the same enactment, to which your attention is particularly directed, that it was not only competent to, but incumbent on the Register to decline registering an instrument not drawn up on the paper required by that Regulation, provided that, with reference to Section 8, the irregular stamp does not equal or exceed in value the stamp which ought to have been used. If it equal or exceed the regular stamp in value, the Register has clearly no right to take exception to it, or to decline registering the deed so stamped.—*Con. 438, 26th Nov. 1826.*

406. Copies of deeds brought for registry, as directed in Section 2. Regulation 20, 1812, being intended merely for record, should be admitted to be drawn out on plain paper.—*Con. 119, 28th Jan. 1813.*

407. A Register of deeds would not be justified in refusing to register any document presented to him, by reason of its being written in the Persian language.—*Con. 1230, West. C. 5th July, Cal. C. 2d Aug. 1839.*

408. The Register refused to register a deed of sale presented by A., as executed by him in favour of B, on the plea that a deed of sale for the same land, purporting to have been executed by A. in favour of C, had already been registered by a person acting under A.'s mooktarnamah duly attested. Held that the Register should register the deed brought to him for that purpose, leaving it to the courts to decide which deed was the true and valid document, but that the Register however should satisfy himself as to the identity of the person registering in person, or ascertain the due attestation and validity of the mooktarnamah if by attorney.—*Con. 1351, Cal. C. 22d July, West. C. 12th Aug. 1842.*

409. A deed of sale having been produced before a Register for the purpose of being registered, he after a summary enquiry ordered the sale to be set aside. This order declared to be illegal, the case not having come before him judicially.—*S. D. A. Sel. Rep. 15th Sept. 1813, vol. 2, p. 85.*

410. I have the honor to report, for the information of the Court of Sudder dewanny adawlut, that on the occasion of my late circuit in this division, I inspected the register books

of deeds in the zillahs of Sarun, Shahabad and Tirhoot. In the two former, they appeared to be kept up in conformity with the Regulations.

whereby a person binds himself to serve as a slave for several years.

At Tirhoot the practice of registering mooktarnamahs still prevailed, an irregularity noticed in my letter to your address under date the 24th of September, 1831. I requested the Judge to call for, from the register, and furnish an explanation of the continuance of this practice after the illegality had been pointed out, as stated in my letter above alluded to, and I have now the honor to submit a copy of the reply of the Register of deeds, which perhaps will be deemed satisfactory by the Sudder Court.

I deem it incumbent on me at the same time to notice a practice that prevails in Tirhoot, which I conceive to be infinitely more objectionable, and of the legality of which I am doubtful, viz. that of registering deeds called, or rather miscalled, ijaranmahs, in a separate book kept for the purpose. The nature of the deeds I cannot better explain than by the following quotation of the purport of the last deed registered :—" Meer Muttooh, aged about 26. binds himself over for the period of 85 years, and his descendants for ever, for the sum of 18 rupees, to Omrao Sing, vakeel of the Civil court at Tirhoot."

In another, a person disposes of the services of the slave girl, and of her children for a term of 81 years, for the sum of 200 rupees ; and the rest were generally of a similar purport.

My object in now noticing these deeds, is to obtain the opinion of the Court of Sudder dewanny adawlut as to the legality of such transactions being registered under Regulation 20 of 1812, or any other law enacted for the guidance of the Register of deeds.

In my general report to Government I purpose commenting on the policy of any longer openly supporting, by the records and decisions of our courts, a monstrous system of slavery, perhaps the only relic of the barbaric operation of Mahomedan law, which has not been either modified or superseded by our more mild and civilized code.

I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, reporting that you had examined the books of the offices of Register of deeds in the districts of Sarun, Shahabad and Tirhoot, on the occasion of your late circuit of the division. In reply, I am directed to observe that as deeds of the description alluded to in your letter are not specified in Regulation 36 of 1793, or Regulation 20 of 1812, the registry of them is illegal under the prohibition contained in Section 7 of the Regulation last quoted ; and to request that you will communicate this opinion to the Judge of Tirhoot for the information and guidance of the Register of deeds.—*Con. 812, 16th Aug. 1833.*

#### SECTION XLIV.

##### *Registry of Deeds—Rules for Registering.*

411. Every Register shall attend at his office for the despatch of all business belonging thereto, during certain specified hours each day, between sunrise and sunset (Sundays and holidays excepted), and after determining the particular hours of such attendance, he shall affix a written notice thereof in some conspicuous part of his office for general information.—*Reg. 36, 1793, Sect. 13.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 13.*

Hours for the registry of deeds.

In what office deeds are to be registered.

412. The registry of all deeds shall be made in the registry office of the zillah or city in which the property affected by them may be situated, and if the property be situated in the jurisdictions of two or more of the Courts of Dewanny adawlut, the deeds affecting it shall be registered in the office of each jurisdiction.—*Reg. 36, 1793, Sect. 7.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 7.*

Deeds may be registered in any office whether it be in the district in which the property is situated, or not.

413. It is hereby enacted, that from and after the passing of this Act, deeds may be registered in any registry office within the Presidency of Fort William in Bengal, whether such office be in the district where the property or any part thereof to which such deeds relate, is situated, or not.—*Act 11, 1815, Sect. 1.*

Course of procedure, when the registry office in which it is registered, is in a district in which the whole of the property is not situated

414. Provided always, and it is hereby enacted, that when the registry office in which a deed is registered is in a district in which the whole of the property to which such deed relates is not situated, it shall be the duty of the Register of the said office to forward to the office of the district or districts in which the whole or any part of such property is situated, a copy of the deed as registered and endorsed in his office, the said copies to be furnished and attested as prescribed in Clause 1, Section 2, Regulation 20, 1812, and the Register of any office receiving such copy so forwarded, shall duly register the same as if it had been presented to him in the first instance by the party registering.—*Ibid, Sect. 2.*

Fee for the copy required for transmission

415. And it is hereby enacted, that for every such copy required for transmission to any office as aforesaid, the party registering shall pay the usual fee, and the Register receiving the same shall duly account for the same to the several Registers, to whose offices copies may be transmitted for registry.—*Ibid, Sect. 3.*

When a deed will be held to be duly registered under this act

416. And it is hereby enacted, that a memorial of any deed shall be held to be duly registered according to law, in respect to any property which may be situated in any one district, as soon as the original deed or a copy thereof (as the case may be) shall have been registered in manner aforesaid in the registry office of such district, whether or not a copy thereof have been registered in all or any of the other districts, in which the property to which the deed relates may be situated.—*Ibid, Sect. 4.*

Each description of deeds to be registered in a separate book, paged and attested as herein directed

417. Each species of deed shall be registered in a separate book, each leaf of which shall be paged, and be attested by the Judge of the Dewanny adawlut of the zillah or city, who shall note in his own hand-writing on the last page of each book, the number of pages contained in each book, and attest the note with his official signature. No register shall be deemed authentic, excepting such as shall be so paged and attested.—*Reg. 36, 1793, Sect. 8, Cl. 1.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 8, Cl. 1.*

Deeds registered to be numbered.

418. Every deed entered in a register book shall be numbered, and the date of the month and the year, as well as the time of the day when every deed may be registered, shall be noted in the margin of the register books, which shall be deposited

Date of the registry, &c. to be noted in

amongst the records of the Dewanny adawlut.—*Reg. 36, 1793, Sect. 8, Cl. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 8, Cl. 2.*

the margin of the register. Registers to be deposited in court.

419. Whenever any person may be desirous of procuring any deed of the description of those specified in Section 3, Regulation 36, 1793, and in the corresponding rules of Regulation 17, 1803, to be registered, he shall attend either in person, or by an authorized representative, at the office of the Register with the original deed and an exact copy of it, attested by one at least of the parties to the instrument, and by one of the witnesses to the execution of it. The Register, after having adopted the prescribed measures for ascertaining the validity of the original, and having compared with it the copy above required to be furnished, shall without loss of time specify on the back of the latter, the date and hour of the day on which it was presented for the purpose of being registered, shall cause it to be filed according to the order of time in which it may have been received; and entered in the register book according to the same order, certifying in the said book the day and hour on which the entry was completed and inspected by him.—*Reg. 20, 1812, Sect. 2, Cl. 1.*

Rules to be observed in registering deeds.

420. On completion of the entry in the manner above stated, the Register shall return the original deed to the person from whom it may have been received, with a certificate under his signature endorsed on the deed, specifying the date and the hour of the day on which it was registered, and the page on which it is entered in the register book.—*Ibid, Cl. 2.*

Original deed to be returned with a certificate endorsed thereon.

421. The entry in the register book, shall in all practicable cases, be made at the time of endorsing the copy required to be furnished, but the insertion of it shall on no account be postponed beyond the day on which the endorsement may be made.—*Ibid, Cl. 3.*

The entry in the register book to be made within the day on which the endorsement is made.

422. Held, on a reference from the Judge of Mymensing, that a hibanamah, or deed of gift, could not be registered after the death of the donor, and that the Register of deeds was quite right in refusing to register it.—*Con. 1218, West. C. 24th May, Cal. C. 21st June 1839.*

A hibanamah cannot be registered after the death of the donor.

423. The person or persons executing the deed, or his or their authorized representative, with one or more of the witnesses to the execution of it, shall attend at the registry office, and prove by oath before the Register, the due execution of the deed; upon which, the Register shall cause an exact copy of the deed to be entered in the proper register book, and, after having caused it to be carefully compared with the original, shall attest the copy with his signature, and shall also cause the parties, or their authorized representatives in attendance, to subscribe their signatures to the copy, in the presence of two creditable witnesses, (whose names shall also be subscribed thereto) and shall then return the original, with a certificate under his signature endorsed thereon, specifying the date, and the time of the day on which such deed shall have been so registered, with references to the book containing the registry thereof, and the page and number under which the same shall have been entered therein.—*Reg. 36, 1793, Sect. 9, Cl. 2.—Benarès Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 9, Cl. 2.*

Forms

Persons who bring deeds for registry are not required to sign the copy made in the registry book.

424. The Court having reason to believe that it is still the practice, in some districts, to require persons who bring deeds for registry to sign the copy made in the register book, as directed by Section 9, Regulation 36, 1793, and Section 9, Regulation 17, 1803; direct me to request that you will inform the Register of deeds of your district that, as the provisions of the sections above cited have been superseded by Section 2, Regulation 20, 1812, he should abstain from the practice, if it obtains in his office.—*Cir. Ord. 2d Sept. 1836.*

Who are required to attend the register at the time of registry.

425. I am directed by the Sudder dewanny adawlut, to acknowledge the receipt of a letter from the Judge, under date the 22d July last, with its enclosures, requesting the Court's construction of Section 9, Regulation 17, 1803, relative to the forms to be observed in the registry of deeds. The Court understand the intention of the section to be, that the person executing the deed, or his authorized representative (mooktar) must attend to acknowledge the execution, and that one or more witnesses to the execution of the deed must also attend to prove the execution by their testimony on oath. When the person executing the deed may depute a mooktar with a mooktarnamah, instead of attending himself, to acknowledge the deed, the execution of the mooktarnamah should also be proved by the examination of two witnesses on oath. But the Court do not consider it to be required by the Regulation cited, that either the party executing the deed, or his mooktar, should be examined on oath.—*Con. 226, 3d Nov. 1815.*

Certificates of the registry of deeds to be considered as evidence of their registry.

426. The certificate of the Register, endorsed agreeably to the forms described in Clause 2d of the preceding section, shall be considered in all Courts of justice to be sufficient evidence of the registry.—*Reg. 36, 1793, Sect. 10.—Benores Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 10.*

Registers to prepare an annual index to the register books.

427. It shall likewise be the duty of the Register to prepare, as soon after the expiration of each English year as possible, an index to the register books.—*Reg. 20, 1812 Sect. 9.*

Registers to preserve carefully and enter in a book all powers of attorney for registering deeds.

428. The Registers are also hereby required not only to preserve with care the powers of attorney which may be produced by persons attending on behalf of others to procure deeds to be registered, but likewise to cause all such powers to be regularly entered in a separate book, to be kept for that purpose.—*Ibid Sect. 10.*

Powers of attorney produced by persons attending on the behalf of others should be entered in a separate book.

429. I am directed by the Court to acknowledge the receipt of your letter of the 17th ultimo and its enclosures, and in reply to inform you that the Court are of opinion that under Section 10, Regulation 20, 1812, powers of attorney produced by persons attending on behalf of others to procure the registry of deeds should be entered in a separate book, as directed by Section 7 of the same Regulation.—*Con. 732, Cal. C. 9th Nov., West. C. 7th Dec. 1832.*

Persons counterfeiting or falsifying entries in the register books or certificates to be prosecuted criminally.

430. If any person or persons shall at any time be suspected, on sufficient grounds for commitment, of counterfeiting or falsifying any entry in any of the register books ordered to be kept, or any certificate such as is directed to be granted by this Regulation, he or they shall be prosecuted on the part of Government in the Criminal court of judicature, and the several Registers shall, as agents for the prosecution, adopt every legal measure in their power for the proof of the crime, and the due execution of the laws against the offender.—*Reg. 36, 1793, Sect. 12.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 12.*

## SECTION XLV.

*Registry of Deeds—Inspection and Copies.*

431. The Register shall on application being made to him, allow all persons to inspect the register books, as well as grant copies of all deeds registered by him to persons whom they may concern, and such copies in the event of the originals being lost, destroyed, or not forthcoming, shall be received as sufficient evidence of such deeds in all Courts of justice whatever, proof being made by the subscribing witnesses to the original deed, that the original was duly executed.—*Reg. 36, 1793, Sect. 11.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 11.*

Register to allow all persons to inspect the register books.

To grant copies of deeds

Copies of registered deeds lost or not forthcoming to be considered by the courts of judicature as evidence of the originals, the execution of the latter being proved by subscribing witnesses.

All persons allowed to inspect the filed copies and register book.

432. The Register shall on application being made to him, allow all persons to inspect the copies of deeds attested, endorsed, and filed in the manner prescribed in the preceding clause, as well as the register books—*Reg. 20, 1812, Sect. 2. Cl. 4.*

433. In like manner, the Register shall, on application being made to him, grant copies of all engagements registered by him to persons whom they may concern, and such copies in the event of the originals being lost, destroyed, or not forthcoming, shall be received as sufficient evidence of such deeds in all Courts of Judicature whatever; proof being made by the subscribing witnesses to the original deed, that the original was duly executed.—*Ibid. Cl. 5.*

Copies to be granted and such copies to be received in evidence in case of the originals being lost or destroyed.

434. When copies of deeds, not filed in any Court of judicature, are required from the office of Register of deeds, such copies must be written on a stamp of the same value as the original deed, or one of eight rupees, according as the party taking the copy may or may not have a direct interest in the subject matter of the deed. [ *vide also Regulation 10 of 1829, Schedule A., Art. 20, 23, and Schedule B., Art. 3.*—*Con. 42<sup>a</sup>, 4th Aug. 1826.*

The value of the stamp on which copies of deeds not filed in a court of judicature, and required from the office of register are to be written

## SECTION XLVI.

*Registry of Deeds—Validity given by Registry.*

435. It shall be left to the option of all persons to register or not, as they may think proper, any of the descriptions of deeds specified in the preceding section, that have been executed, or which may be executed, prior to the 1st of January, 1796. The not registering such deeds, shall in no wise operate to the prejudice of the rights of the parties thereto, which shall remain the same as if this Regulation had never been enacted.—*Reg. 36, 1793, Sect. 4.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 4.*

Option left of registering any of the deeds specified in the preceding sections executed, or that may be executed prior to 1st Jan. 1796.

436. It shall also be left to the option of all persons to register or not, as they may think proper, the several descriptions of deeds specified in clauses fourth, fifth and sixth of Section 3, whether executed previous or subsequent to the 1st of January, 1796. The not registering of the deeds specified in those three clauses, shall in no wise operate

Deeds specified in the three last clauses of sec 3, whether executed before or after 1st Jan 1796, may be registered or

not at the option of the parties.

to the prejudice of the rights of the parties thereto, which shall remain the same as if this Regulation had never been enacted.—*Reg. 36, 1793, Sect. 5.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 5.*

Deeds of sale or gift executed subsequent to the 1st Jan. 1796.

437. Every deed of sale, or gift, of the description specified in Clause 2, Section 3, that may be executed on or after the 1st January, 1796, and a memorial of which shall be duly registered according to this Regulation, shall, provided its authenticity be established to the satisfaction of the court, invalidate any other deed of sale or gift for the same property, executed subsequent to the said date which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed.—*Reg. 36, 1793, Sect. 6, Cl. 1.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 6, Cl. 1.*

Deeds of mortgage executed subsequent to the 1st Jan. 1796, duly registered to be discharged in preference to mortgages granted subsequent to that date not registered.

438. Every deed of mortgage of the description specified in Clause 3, Section 3, that may be executed on or after the 1st January, 1796, and a memorial of which shall be duly registered according to this Regulation, and provided its authenticity be established to the satisfaction of the court, shall be satisfied in preference to any other mortgage on the same property executed subsequent to the said date which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage.—*Reg. 36, 1793, Sect. 6, Cl. 2.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 6, Cl. 2.*

Qualification of the rules in the two preceding clauses applicable to cases in which persons may purchase, take on gift or mortgage property knowing it to have been previously sold, given, or mortgaged subsequent to the 1st Jan. 1796.

439. It being the object, however, of the rules in the two preceding clauses, to prevent persons being defrauded by purchasing, or receiving in gift, or taking in mortgage, real property which may have been before sold, given, or mortgaged, subsequent to the 1st January, 1796, and as persons can never suffer such imposition when they are apprized of the previous transfer or mortgage of the property, it is to be understood that if any person shall purchase, receive in gift, or take in mortgage, any real property knowing such property to have been previously sold, given, or mortgaged, to any other person subsequent to the 1st January, 1796, and that the deed of sale, gift, or mortgage has not been registered, and shall register his own deed, in such case the deed of sale, gift, or mortgage of such subsequent purchaser, donee, or mortgagee, which may have been registered, shall not from the registry of it invalidate, or be discharged in preference to the unregistered deed of sale, gift, or mortgage, first executed, provided the authenticity of the latter be established to the satisfaction of the court.—*Reg. 36, 1793, Sect. 6, Cl. 3.—Benares Reg. 28, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 17, 1803, Sect. 6, Cl. 3.*

Repeals all provisions in any regulation touching knowledge or notice of unregistered conveyances, &c. Enacts, that unregistered titles shall be void as against any person claiming under subsequent registered

440. Whereas the registry laws now in force in the respective mofussils of Bengal, Madras, and Bombay, provide that registered conveyances and other instruments affecting titles to land and other interests therein shall not take precedence of unregistered conveyances and instruments in cases where the party registering shall have known of the existence of such unregistered conveyances or other instruments. And whereas a complicated system of law has arisen out of the construction which is to be given to the

provisions regarding the knowledge of parties, or notice had by them in such cases. And whereas, much perjury has been committed in investigations touching the fact of such notice or knowledge, and much of the time of the courts has been occupied with such investigations. And whereas, in consequence of forgeries, perjuries, fraudulent concealments, and other practices, no person purchasing or advancing money on the security of land, can safely rely on the conveyances or other instruments affecting the title to such land or other interest therein affording, by means of their being registered, a security against conveyances or instruments being set up, as of previous date, by unregistered claimants: It is hereby enacted, that all provisions contained in any Regulation or Regulations of the Bengal, Madras, or Bombay codes, touching such knowledge or notice as aforesaid, of previous unregistered conveyances, or instruments affecting titles to land or other interests therein, shall be repealed from the first day of May next: and every conveyance or other instrument affecting title to land, or any interest in the same authorized by those codes respectively, to be registered, shall, so far as regards any lands to which the same relate, be void as against any person claiming under any subsequent conveyance or other instrument duly registered, unless the prior conveyance or instrument shall have been duly registered before the registration of the subsequent conveyance or instrument, any alleged notice or knowledge of such prior conveyance or instrument notwithstanding. Provided always, that this Act shall not be construed to extend to any conveyance or other instrument made before the first day of May next.—*Act I 1843.*

title, notwithstanding notice of prior unregistered title. Act not to extend to conveyances made before 1st May, 1843.

441. Whereas doubts have arisen as to the true meaning and construction of Act No. I. of 1843. —It is hereby enacted, that the said Act [I. 1843] is repealed, except in so far as it repeals all provisions contained in any Regulation or Regulations of the Bengal, Madras, or Bombay codes, touching the knowledge or notice had by parties to registered conveyances and other instruments affecting titles to land and other interests therein, of the existence of unregistered conveyances or other instruments affecting such titles or other interests therein.—*Act XIX. 1843. Sect. 1.*

Repeals act 1, 1813, except so far as it repeals provisions touching knowledge or notice of the existence of unregistered instruments, &c.

442. And it is hereby enacted, that from the first day of May last past, every deed of sale or gift of lands, houses or other real property, a memorial of which has been or shall be duly registered according to law, shall, provided its authenticity be established to the satisfaction of the court, invalidate any other deed of sale or gift for the same property which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed—and that from the said day every deed of mortgage on land, houses and other real property, as well as certificates of the discharge of such incumbrances, a memorial of which has been or shall be duly registered according to law, and provided its authenticity be established to the satisfaction of the court, shall be satisfied in preference to any other mortgage on the same property which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage, any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding. Provided always, that nothing in

Deeds of sale or gift of real property, if registered, shall invalidate other deeds of sale or gift which have not been registered, &c. and registered deeds of mortgage, and certificates of discharge of incumbrance shall be satisfied in preference to any other, &c.



this section contained shall be construed to extend to any deed or certificate made before the said first day of May last past.—*Act XIX. 1843, Sect. 2.*

No conveyance, &c. affecting title to land other than such deed or certificates as aforesaid shall be void for want of registration.

443. And it is hereby declared and enacted, that no conveyance or other instrument affecting title to land, or any interest in the same whether made before or after the said first day of May last past, other than such deeds or certificates as aforesaid, are or shall be in any respect void for want of registration, any Act, Regulation, or law to the contrary notwithstanding.—*Ibid, Sect. 3.*

It shall be optional with persons contracting engagements to register them or not, but registered engagements shall be satisfied in preference to others.

444. It shall be optional with persons contracting engagements for the delivery of indigo to register them, or not, as they may judge proper; but every engagement contracted for the delivery of indigo after the 1st day of January, 1813, which may be duly registered according to the provisions of this Regulation, shall, in case it be in other respects a legal and bona fide engagement, be satisfied in preference to every other contract for the delivery of indigo, being the produce of the same ground, which may not have been registered, whether the last mentioned deed shall have been executed previously or subsequently to the registered deed.—*Reg. 20, 1812, Sect. 3, Cl 3.*

## SECTION XLVII.

### *Registry of Deeds—Fees.*

Fee to be allowed to the register for registering deeds furnishing copies and making searches

Register may refuse to perform the official acts required of him until the fee be paid

To defray the expense of the officer from the fees

445. The Register shall be allowed a fee of two rupees for every deed registered by him, to be paid by the party causing the same to be registered, and no more; a fee of one rupee for every copy furnished of a deed registered by him, to be paid by the party applying for such copy, and no more; and a fee of half a rupee for every search made on an inspection of the register, to be paid by the party inspecting the same, and no more. The Register is authorized to refuse the official acts required from him until these fees be paid, and from such fees he shall provide the necessary native officers to make the entries and copies directed, as well as the requisite stationery.—*Reg. 36, 1793, Sect. 14.—Benares Reg. 28, 1795, Sect. 4.—Ced. and Conq. Prov. Reg. 17, 1803, Sect. 14.*

Fees allowed to the register for each engagement.

446. The Register shall be allowed a fee of two rupees for every engagement registered by him, to be paid by the party causing the same to be registered, and no more; a fee of one rupee for every copy furnished of a deed registered by him, to be paid by the party applying for such copy, and no more; and a fee of half a rupee for every search made on an inspection of the register book, to be paid by the party inspecting the same, and no more. The Register is authorized to refuse the official acts required from him until these fees be paid, and from such fees he shall provide the necessary native officers to make the entries and copies directed, as well as the requisite stationery.—*Reg. 20, 1812, Sect. 4.*

## SECTION XLVIII.

*Registry of Deeds—Appointment of an Officiating Register.*

447. The office for the registry of deeds in the several zillahs and cities, which is provided for by Regulation 36, 1793, extended to Benares by Regulation 28, 1795, and to Cuttack by Section 32 of Regulation 12, 1805, and re-enacted for the Ceded Provinces in Regulation 17, 1803, extended to the Conquered Provinces and Bundelkund by clause first, Section 17, Regulation 8, 1805, shall in all cases be established at the station of the Zillah or City court, and shall, as directed by the Regulations abovementioned, be superintended by the Register of the Zillah or City court, or where there may be more Registers than one, by the Register employed at the station of the Zillah or City court, so long as he may continue to reside at such station, and as already required by the Regulations in force, he shall personally discharge the duties of the office committed to him, whilst present at the station, unless prevented by sickness, or otherwise; in which case, as well as in all cases of temporary absence from the station, he is permitted, as heretofore, with the approbation of the Judge of the Zillah or City court to which he may be attached, to appoint a deputy, being a covenanted servant of the Company, and duly qualified to act for him; who after taking an oath, similar to that prescribed for the Register of deeds, is authorized to perform the several acts which the Register is empowered to perform.—*Reg. 4, 1824, Sect. 2.*

The office for the registry of deeds to be established at the sudder station of the zillah or city court.

Superintended by the register

If there be more than one register, by the register employed at the sudder station.

If the register be prevented from performing this duty by sickness, &c. may appoint a deputy

With approbation of the judge.

Deputy to be a covenanted servant.

Must take oath

448. I am directed by the Court of Sudder dewanny adawlut, to acknowledge the receipt of your letter of the 14th instant, and its enclosures, requesting to know whether Mr. W. B. Jackson, the officiating second Register of your court, is authorized to register deeds while officiating as Collector of the district, or whether he must be re-appointed to act in that capacity, under the provisions of Regulation 4, 1824—As Mr. Jackson has been already appointed to officiate as Register of deeds, the Court do not think it necessary that you should re-appoint him to officiate in the capacity, whilst acting as Collector, under the Regulation abovementioned.—*Con. 366, 25th June 1824.*

An officiating register of deeds may act in that capacity while acting as collector.

449. I am directed by the Court to acknowledge the receipt of your letter of the 1st instant and its enclosures, and in reply to communicate to you their opinion that a Register of deeds, not being the Register of the Zillah or City court, is entitled, while officiating for the Judge during the absence of the latter, to fees on the registry of all deeds executed by him.—*Con. 743, 14th Dec. 1832.*

A register of deeds not being the register of the zillah court is entitled, while officiating in the absence of the latter, to the fees on all deeds registered by him.

450. Whenever a zillah or city Register, vested with the superintendence of the registry office, may be absent from the station where the office is established without having appointed a deputy, in pursuance of the foregoing section, the Judge of the station is hereby authorized to appoint some duly qualified covenanted servant of the Company to act as Deputy Register of deeds, and the deputy so appointed, after being duly sworn, shall be authorized to perform the prescribed duties of the office.—*Reg. 4, 1824, Sect. 3.*

If a register vested with the superintendence of the office be absent from the sudder station, and have not appointed a deputy, the judge authorized to appoint a deputy.

Judge shall appoint a qualified person being a covenanted servant to act as register of deeds, when from a vacancy in an office of register, a deputy cannot be appointed.

If there be no qualified person at the station, the judge is authorized and required to perform the duty himself.

Registry of deeds hitherto duly executed by other covenanted servant than the register, with the permission of judge, in absence of register equally valid, as if executed by register.

Deputy or acting register to receive the fees

Fees to be carried to the credit of govt when the judge registers deeds, after defraying the necessary expence of the establishment.

Govt alone can permanently appoint a register whether in zillahs under reg 36, 1793, or at subordinate stations under act 30, 1838. A vacancy is in every instance to be notified to government.

The judges will be guided in their nomination of persons as registers by the comparative fitness of the candidates. The office should not be liable to frequent change of incumbents, and the civil surgeon should generally be chosen.

451. It shall moreover be the duty of the zillah or city Judge to appoint a qualified person, being a covenanted servant of the Company, to officiate as Register of deeds, whenever, from a vacancy in the office of Register, the nomination of a deputy cannot take effect agreeably to the preceding section.—*Reg. 4, 1824, Sect. 4.*

452. In the event of there being no covenanted servant at the station, to whom in the cases mentioned in the two preceding sections, the Judge may deem it proper to confide the office of registering deeds, he is himself hereby authorized and required to perform the prescribed duties of the office.—*Ibid. Sect. 5.*

453. The registry of all deeds which may have been hitherto duly executed by a zillah or city Judge, or other covenanted servant, with his sanction, in the absence of the Register, is hereby declared to be of equal validity, as if it had been executed by the zillah or city Register.—*Ibid, Sect. 6.*

454. The deputy or officiating Register appointed under Sections 2, 3 or 4 of this Regulation, shall receive during the time of his officiating, the fees authorized by the Regulations; but whenever the Judge may perform the duty, under Section 5, the net amount of such fees after defraying the necessary expence of the establishment, shall be carried to the credit of Government.—*Ibid. Sect. 7.*

455. In pursuance of the instructions of the Government, the Court intimate that the Government alone have the power of permanently appointing Registers of deeds, whether in zillahs under the provisions of Regulation 36, 1793, or at subordinate stations, under Act XXX 1838, and that the Judges must in every instance of a vacancy in the office of Register of deeds, notify the same to Government, that the appointment may be filled up.—*Cor. Ord. 12th Dec. 1845. par. 1.*

456. I am directed by the Court to transmit to you, for your information and guidance, the accompanying copy of a letter (No 178, of the 28th ultimo) from the Secretary to the Government of Bengal, explanatory of the principles which should guide the zillah Judges in selecting persons for the office of Register of deeds. You are requested to observe, however, that although any person whatever may be appointed to the office of Register of deeds, constituted under Act XXX. 1838, none but covenanted servants and Principal Sudder Amceens are eligible to the office at sudder stations, constituted under the previous Regulations; therefore, in nominating persons to Government for the situation of Register of deeds, the description of office, which has become vacant, should be specified.—*Extract*—"With reference to the recent correspondence with the sudder court, on the subject of the appointment of Registers of deeds and to several applications from zillah Judges on that subject which are now before His Honor, I am directed to request that the Court will take an opportunity of instructing the zillah Judges that they should be guided in their nomination of officers to fill vacant registrarships by the comparative fitness of the candidates who may present themselves for selection, without regard to any other consideration. It is, in His Honor's opinion, of much consequence that the office of Registrar should not be liable to frequent change of incumbents, and, for this reason, the civil Surgeon of a station would usually be a fitter candidate than the covenanted assis-

tant. On the other hand, the civil Surgeons do not always possess sufficient knowledge of the Native languages to discriminate between different sorts of deeds presented for registry, and on this ground it may sometimes happen that the covenanted assistant is a fitter candidate than the civil Surgeon. But there may be at a station individuals, in or out of the Service, fitter than either the civil Surgeon or the assistant to the Magistrate ; and when this is the case, and the law may admit of it, the Deputy Governor would not desire that the choice of the Judge should be confined to officers in the Service, or to any particular branch of the Service. The Judges should, therefore, in reporting their nominations to Government, explain always that they have adverted to these considerations in making their selections."—*Cir. Ord.* 27th Feb. 1846.

When there are persons better fitted than the civil surgeon, or the assistant to the magistrate, they should be preferred.

## SECTION XLIX.

### *Registry of Deeds—Supervision.*

457. In order at the same time to establish a proper control over the conduct of the public officers entrusted with the discharge of the duty of registering deeds, it is hereby enacted, that the endorsement on the copies required to be kept of the said deeds by the provisions of this Regulation, and the transcripts thereof in the register book, shall be both countersigned by the Judge of the adawlut, within one month of the date of registry, unless prevented by absence ; and in that case within one month after his return.—*Reg.* 20, 1812, *Sect.* 6, *Cl.* 2.

The endorsement on copies of deeds kept under this regulation and the transcripts thereof, in the register book, to be countersigned by the Judge, and at what period.

458. On affixing his name to the copies of the deeds and to the register books, it shall be the duty of the Judge to report to the Secretary to Government in the judicial department, for the information of the Governor General in Council, any errors or irregularities, or any deviation from the established Regulations, which he may have discovered in the conduct of the business confided to the Register of deeds, or to his Native officers.—*Ibid.*, *Cl.* 3.

The judge to report for the information of govt, any irregularities he may discover in the conduct of the business.

459. The Judges of the Zillah and City courts having been this day instructed to submit for the inspection of the Commissioners of Circuit, on their holding the half-yearly sessions of jail delivery, the registry books of their courts and the transcripts of the deeds filed for record. I am directed by the Court of Sudder dewanny adawlut to request that you will inspect them, when so submitted, and bring to the notice of the Court any irregularity observable in the mode of registry and countersigning by the Judges, as directed by the provisions of Regulation 20 of 1812.—*Cir. Ord.* 25th March 1831.

The registry books of the zillah and city judges will be periodically submitted to the inspection of the commissioners. The commissioner, on inspecting them, will bring to the notice of the sudder court, any irregularity observable.

## SECTION L.

### *Registry of Deeds—Establishment of a Registry Office at any Civil Station.*

460. It is hereby enacted, that Sections 2 and 14, Regulation 36, 1793, the provisions of which were extended by Regulation 28, 1795 ; Regulation 17, 1803 ; Section 17, Regulation 8, 1805 ; and Section 32, Regulation 12, 1805 ; Section 4, and Clauses 2 and 3, Section 6, Regulation 20, 1812, and Section 2, Regulation 4, 1824, of the Bengal code, be modified.—*Act XXX.* 1838, *Sect.* 1.

Sec 2 and 14, reg. 36, 1793, reg. 17, 1803; sec 17, reg 8, 1805; sec. 32, reg 12, 1805; sec 4, cl 2 & 3, sec 6, reg 20, 1812, and sec 2, reg. 4, 1824, modified.

Offices for the registry of deeds may be established at any civil station.

461. And it is hereby enacted, that in addition to the offices to which those sections relate, offices for the registry of deeds may be established at any civil stations, and may be placed by the orders of Government under the superintendence of any officers resident at such stations whom Government may nominate for that purpose.—*Act XXX. 1838, Sect. 2.*

Same fees payable at offices established under this act, as at old offices.

462. And it is hereby enacted, that the registration of deeds at any office of registry authorized by this Act shall be subject to the payment of the same fees as are prescribed in Section 14, Regulation 36, 1793, for deeds registered at an office established at the station of a Zillah or City court.—*Ibid, Sect. 3.*

Sec 15, reg 36, 1793; and cl 2 & 3, sec 6, reg 20, 1812; shall not apply to offices and persons appointed under this act

463. And it is hereby enacted, that Section 15, Regulation 36, 1793, and Clauses 2 and 3, Section 6, Regulation 20, 1812, of the Bengal code, shall not be held applicable to officers and persons established and appointed for the registry of deeds under this Act.—*Ibid, Sect. 4.*

Fees for registering deeds in European language to be paid at the established rates of section writing in addition to fees under sec. 14, reg 36, 1793.

464. And it is hereby enacted, that persons desirous of registering deeds written in any European language at any office of registry in the territories subject to the Presidency of Bengal, shall be required to pay for transcribing the same according to the established rates of section writing, in addition to the fees prescribed by Section 14, Regulation 36, 1793.—*Ibid, Sect. 5.*

Zillah judge, &c. may appoint temporary registrars in case of death or absence of registrars.

465. And it is hereby enacted, that in case of the death or absence on leave of any person appointed by Government to register deeds under this Act, it shall be lawful for the zillah Judge or other officer specially authorized by Government, to appoint any person whom he may think proper to take temporary charge of the office and to register deeds in the same manner as if such person had been appointed to the office by the orders of Government.—*Ibid, Sect. 6.*

## SECTION LI.

### *Registry of Deeds—Recapitulation of the Rules by the Sudder Court.*

Govt has ordered that detailed instructions shall be drawn out for those employed in the duty of registration.

466. The enactment of Act XIX. of 1843, having greatly increased the importance of providing for the punctual and correct registration of deeds, the Government have been pleased to direct that offices for that purpose shall be established at every civil station, in accordance with Section 2, Act XXX. of 1838, and that detailed instructions, for the guidance of those who may be entrusted with the duty, shall be drawn out and promulgated in the *Government Gazette*.—*Co. Ord. 31st Jan. 1845, par. 1.*

The following rules embodying the provisions of law, & the previous authoritative orders are published for general information.

467. Accordingly, the subjoined rules, embodying those provisions of law, and those authoritative orders, which seem to require denotation, are published with the sanction of Government for the information of civil Judges, and for the guidance of Registers of deeds.—*Ibid, par. 2.*

Recapitulation of the regulation in which the rules for

468. It may be advisable to point out the several Regulations prescribing rules for the registry of deeds, and, in the succeeding paragraphs, to indicate those provisions, which call for

the particular attention of those to whom the duty may be confided : these are Regulation 36 of 1793, for the Lower Provinces, corresponding with Regulation 17 of 1803, for the Ceded Provinces (extended to the Conquered Provinces by Clause 1, Section 17, Regulation 8, 1825) ; Regulation 20 of 1812 ; Regulation 4 of 1824 ; Act XXX. of 1838, and Act XIX. of 1843.—*Cir. Ord. 31st Jan. 1845, par. 3.*

registration are to be found.

469. By Section 3, Regulation 36 of 1793, (Regulation 17 of 1803, for the Ceded Provinces,) and Sections 3 and 5, Regulation 20 of 1812, Registers are required to register memorials of the following deeds : *1stly.* Deeds of sale, or gift of lands, houses, and other real property. *2dly.* Deeds of mortgage on land, houses, and other real property, as well as certificates of the discharge of such incumbrances. *3dly.* Leases and limited assignments of land, houses, and other real property, including, generally all conveyances, used for the temporary transfer of real property. *4thly.* Wusseatnamahs, or wills. *5thly.* Written authorities from husbands to their wives to adopt sons, after their (the husbands') demise. *6thly.* Engagements contracted by indigo planters, whether Europeans or Natives, with ryots and others for the delivery of indigo plant. *7thly.* Bonds, promissory notes, and generally all obligations for the payment of money, held by Construction No. 1270, to include security bonds for the eventual payment of costs of suits. It is enacted by Clause 1, Section 8, Regulation 36, 1793, (Regulation 17 of 1803, for the Ceded Provinces,) and Section 7, Regulation 20 of 1812, that each species of deed shall be registered in a separate book, which shall be uniformly made of English paper, and carefully bound, and by the latter Regulation and section, Registers are expressly prohibited from admitting to registry any deeds, except those above specified. Each leaf of every register book is required by Section 8, Regulation 36 of 1793, (Regulation 20 of 1812, for the Ceded Provinces,) to be paged, and every deed entered in such books must be numbered in an annual series, and the date of the month and the year, as well as the time of day when registry may have been effected must be noted in the book, in which the said deed may be registered.—*Ibid, par. 4.*

Nature of the deeds to be registered

Mode of registration.

Paging of each leaf

Numbering & dating of the deeds

470. The Court, before detailing the forms to be observed in the registry of deeds, desire to remind Registers that they are required by Section 10 of the last cited Regulation, not only to preserve carefully all powers of attorney produced by parties attending on the part of others to procure deeds to be registered, but to cause copies of all such documents to be regularly transcribed in a *separate* book, which must be kept for that purpose. This injunction is reiterated in a Construction of the Sudder dewanny adawlut, No. 732, dated 9th November, 1832.—*Ibid, par. 5.*

Powers of attorney from those who send deeds to be registered, to be entered in a separate book

471. The Court proceed to point out the rules prescribed for the registry of deeds, merely observing that the forms established by Regulation 36 of 1793, (Regulation 17 of 1803, for the Ceded Provinces,) having been found to involve delay and inconvenience have undergone modification by the enactment of Regulation 20 of 1812. *1stly.* It is incumbent on all Registers of deeds to attend daily at office, during certain specified hours, for the despatch of all business appertaining thereto, and, after having determined the hours of such attendance, to affix a written notice thereof in some conspicuous part of their offices for general information. *2dly.* The Registers of deeds will restrict themselves to the ascertainment of the fact, that the deed prescribed for registry has been actually and duly executed by the parties thereto. With this view, before admitting any deed to registry, the Register will require the attendance at his office of the person desirous of procuring registration of any deed, or his authorized

1. Attendance of the register at the office.

2. Duty of the register when a deed is brought for registration

representative, together with the original deed and an exact copy thereof, “attested by one at least of the parties to the instrument, and by one of the witnesses to the execution of it.” The Register on having ascertained, by the evidence on oath of one or more witnesses to the execution, that the deed has been duly executed, should satisfy himself that the copy corresponds precisely with the original deed, and should reject any transcripts, in which interpolations, interlineations, or erasures may be apparent, refusing registry, until a fair legible copy be presented. This will entail no expence on parties, as it has been declared, by Construction No. 119, dated 28th January, 1813, that copies of deeds brought for registry, being intended only for record, should be admitted to be drawn out on plain paper. *3dly*. It will not escape the observation of Registers of deeds, that, agreeably to Clause 1, Section 5, Regulation 20 of 1812, bonds, promissory notes, and other obligations for the payment of money, can be registered only on the application of the party, by whom they may have been executed. *1stly* The Register, having noted on the back of the copy, presented and compared as above, the date and the hour of the day on which it was brought for the purpose of being registered, and having caused it to be filed according to the order of time, in which it may have been received, must have it entered in the register book in the same order; and on completion of the entry in the manner stated, is required to return the original deed to the person from whom it may have been received, with a certificate under his signature endorsed on the deed specifying the date and the hour on which it was registered, and the page on which it is entered in the register book. *5thly* By clauses 4 and 5 of the same section and Regulation, Registers are bound, on application being made to them, to allow parties to inspect the copies of deeds attested, endorsed and filed, as above, as well as the register books, and to grant copies of all deeds registered by them to those whom they may concern. Directions regarding the value of stamped paper, on which such copies should be engrossed, will be found in a Construction of the Sudder dewanny adawlut, No 428, dated 4th August, 1826, and Regulation 10 of 1829, Schedule A, Articles 20, 23, and Schedule B, Article 3—*Cr. Ord. 31st Jan 1845, par. 7.*

3 On whose application bonds, &c can be registered.

4 Process of registration

5 Permission to parties to inspect the copies of all deeds

Value of stamped paper to be used

Remuneration to Register

472. The remuneration to which Registers of deeds are declared by Section 4, Regulation 20 of 1812, to be entitled, is as follows.—*1stly*. A fee of two rupees for every engagement or deed registered by them to be paid by the party causing the same to be registered. *2dly* A fee of one rupee for every copy furnished of a deed registered by him, to be paid by the applicant for the said copy. *3dly* A fee of half a rupee for every search made on an inspection of the register books, to be paid by the party inspecting the same, and until these fees be paid, they are authorized to refuse the official acts required from them—*Ibid. par. 8.*

Facilities which have been created for registration

473. A preferential right having been declared by Section 2, Act XIX. of 1843, to attach to deeds of sale or gift of lands, houses or other real property, as well as deeds of mortgage or lands, and the same descriptions of property, a memorial of which shall have been duly registered according to law, it is obviously desirable, that facilities for such registration, on which the security of property will be greatly dependant, should be multiplied, that the duties of the office should be conducted with the utmost regularity, and with the strictest adherence to the forms prescribed by the Regulations above cited, and that no interruption to the fulfilment of those duties should be suffered by the temporary absence or incapacity of the Register. By the establishment of a separate office for the Register of deeds at every civil station in the lower provinces, every facility that the law permits will be afforded, while a due observance of the preceding instructions, which have been advisedly drawn out in greater detail than may

A separate office established at every civil station

at first sight appear requisite, will secure, it is hoped, the punctual and correct registration of every deed presented for that purpose. Further, the prevention of the interruptions above alluded to, is provided for by Regulation 4 of 1824, which authorizes the Registers of deeds at Sudder stations, in cases of temporary incapacity from any cause, or absence from the station, to appoint a deputy to act for them having first obtained the sanction of the Judge of the Civil court, to which they may be attached, and by Section 6, Act XXX. of 1838, which empowers the zillah Judges in the like cases of death, absence, or temporary incapacity, to appoint any person, whom he may think proper to take temporary charge of the offices constituted by the said Act. It is only needful, as regards these provisions, to remark, that at a sudder station no other officers than Principal Sudder Ameens, and covenanted servants of Government, among whom Surgeons are declared by Construction No. 611, to be included, are eligible; while at a station where no Civil court is located, the same restriction does not exist. It is the duty of the Judges to see that every vacancy is filled up under the provisions above cited, and to satisfy themselves that Registers of deeds before entering on the duties of the office, are fully conversant with the Regulations by which their proceedings must be guided, and with the instructions contained in this Circular order—*Cir. Ord. 31st Jan. 1845, par. 9.*

Register may appoint a deputy

When this is not done, the civil judge may depute some one to act.  
Who are eligible to these offices

Duty of the judges.

474. As regards Registers of deeds at the stations of Zillah and City courts, an obligation is imposed on the civil Judges of supervising their conduct, of countersigning the endorsements on the copies of deeds required by the provisions of Regulation 20 of 1812, to be filed and the transcript thereof in the register books, and of reporting any errors or irregularities, or any deviations from the established Regulations, which he may detect in the performance of the duties confided to the officers in question; and the Court expect, that these obligations will in future be punctually fulfilled. This control has been dispensed with as concerns Registers of deeds appointed under Act XXX. of 1838, by Section 4 of that enactment, but the Judges may still, by inspecting the register books sent to them for the purpose of being deposited with their records, ascertain whether the duties of the officer have been conducted with due regularity and order. And they are hereby required to observe this precaution, reporting for the information of the court any illegal or erroneous acts thereby brought to light.—*Ibid, par. 10.*

Control of the civil judges at civil and at subordinate stations.

Reports to be made by them to their superiors

475. The Court having reason to believe that the practice of preparing annual indexes to the register books, as directed by Section 9, Regulation 20, 1812, has fallen into disuse, are pleased to direct its immediate revival, and with the view of establishing uniformity of system, to annex two forms, according to which the index will be made out. Each of these indexes will terminate with the year. To each a separate book, made of English paper, paged and carefully bound, must be assigned, and for the entries under each letter one or more leaves must be set apart. The entries should be made at the time of registration, with the utmost accuracy, and the order of the Persian alphabet may, perhaps, be more conveniently adopted than any other. It will be incumbent on the civil Judges to enforce due attention to this provision of the law in the manner above desired, and to have the indexes, when delivered over to them at the end of each year, deposited and carefully preserved with the register books to which they relate. Index No. 2, being applicable only to the books in which the deeds relating to land and other real property, described in clauses 1, 2 and 3, paragraph 4 of this order, will be registered, differs slightly in form from the nominal index No. 1, such deeds will be entered in both indexes, while wills, and other deeds not relating to real property, will appear under their proper heads in index No. 1 alone.—*Ibid, par. 11.*

The annual index.

Register books



Statement to be made at the end of the year

476. The civil Judges will, at the close of each year, send to the Court a statement, as per margin, shewing the number of deeds which may have been registered during its course in the offices established for that purpose, and the amount of fees received by the Register, and certify examination and counter-signature by themselves of the several register books up to the close of the period, submitting at the same time any remarks that may occur to them on the working of the system. The first report embracing the period from the promulgation of Act XIX 1843, to the close of 1844, will be submitted with or follow the annual civil statements for 1844.

No. and specification of deeds registered.							
Deeds of sale or gift.	Deeds of mortgage on land, &c	Leases and conveyances for temporary transfer of real property.	Wills.	Authority to adopt.	Contracts for indulgence.	Obligations for payment of money.	Amount of fees received.

No. 1 Alphabetical Index of names of persons executing deeds for 1844—

Names of persons who executed the deed	Name of father		Deeds of sale or gift		Deeds of mortgage on land, &c		Leases and conveyances for temporary transfer of real property		Wills		Authority to adopt		Contracts for indulgence		Obligations for payment of money	
	Vol.	Page	Vol.	Page	Vol.	Page	Vol.	Page	Vol.	Page	Vol.	Page	Vol.	Page	Vol.	Page

No. 2 Alphabetical Index of Property registered for 1844

Mouzas in which property is situated	Parganah		Specification of property		Deeds of sale or gift		Deeds of mortgage on land, &c		Leases and conveyances for temporary transfer of real property	
	Vol.	Page	Vol.	Page	Vol.	Page	Vol.	Page	Vol.	Page

# CHAPTER VI.

## PRINCIPLES OF LAW

### SECTION I.

#### *Rates of Interest in different Provinces.*

[Bengal, Behar and Orissa]

1. If the cause of action shall have arisen before the twenty-eighth day of March, one thousand seven hundred and eighty, the Courts of civil judicature are not to decree higher or lower rates of interest than the following.—*Reg. 15, 1793, Sect. 2, Cl. 1.*

Rates of interest to be decreed where the cause of action shall have arisen before the 28th March, 1780, and  
May not exceed 100 sicca rupees, or

2. On sums not exceeding one hundred sicca rupees, three rupees and two annas per cent. per mensem, or thirty-seven rupees and eight annas per cent. per annum.—*Ibid, Cl. 2.*

3. On sums exceeding one hundred sicca rupees, two per cent. per mensem, or twenty-four per cent. per annum.—*Ibid, Cl. 3.*

May exceed that sum

4. If the cause of action shall have arisen at any period between the twenty-eighth day of March, one thousand seven hundred and eighty, and the first day of January, one thousand seven hundred and ninety-three, no higher or lower rates of interest than the following are to be decreed —*Ibid, Sect. 3, Cl. 1.*

Rates of interest to be decreed where the cause of action shall have arisen between the 28th March, 1780, and the 1st Jan 1793, and

5. On sums not exceeding one hundred sicca rupees, two per cent. per mensem, or twenty-four per cent. per annum. —*Ibid, Cl. 2*

May not exceed 100 sicca rupees, or

6. On sums exceeding one hundred sicca rupees, one per cent. per mensem, or twelve per cent. per annum. —*Ibid, Cl. 3*

May exceed that sum

7. If the cause of action shall have arisen, on or after the first day of January, one thousand seven hundred and ninety-three, the courts are not to decree any interest on any sum whatever, above the rate of twelve per cent. per annum.—*Ibid, Sect. 4.*

12 per cent. to be decreed, if the cause of action shall have arisen after the 1st of Jan. 1793

[Benares]

8. The provisions contained in the several sections of Regulation 15, 1793, are hereby declared to extend to the province of Benares, from the commencement of the ensuing year 1807, A. C. corresponding with the 16th Pouse of the Bengal year 1213, and 7th Pouse of the Fussely year 1214; subject to the following modifications.—*Reg. 17, 1806, Sect. 2.*

Provisions of reg 15, 1793, extended to Benares, from the date herein specified with certain modifications.

9. Instead of the limitations of interest specified in Sections 2 and 3, Regulation 15, 1793, if the cause of action shall have arisen before the period stated in the preceding section, the Courts of civil judicature are to decree whatever rate of interest may have been voluntarily stipulated; or, if interest be payable in any case wherein a specific rate

What rates of interest to be decreed by the courts of civil judicature, if the cause of action have arisen before the pe-

and stated in preceding section

Laws and usages of the province, and the spirit of sec 9, reg. 7, 1795, to be applied in certain cases

may not have been stipulated, according to the law and usage of the province : in conformity with the spirit of Section 9, Regulation 7, 1795, which directs, with respect to bills of exchange, receipts, or notes of hand, that the custom of the country is to be abided by, and with respect to dealings and money transactions amongst muhajuns and shroffs, that the established customs observed, and enforced amongst them, are to be adhered to by the courts in their enquiries and decisions.—*Reg. 17, 1806, Sect. 3.*

What rate of interest to be adjudged, if the cause of action arise after the period specified in sec. 2.

10. If the cause of action shall arise after the period specified in Section 2 of this Regulation, the courts are not to decree any interest above the rate of one per cent. per mensem ; or twelve per cent. per annum.—*Ibid. Sect. 1.*

[The Ceded and Conquered Provinces of Oude.]

Rates of interest to be decreed where the cause of action shall have arisen before the 10th Nov 1801, and

11. If the cause of action shall have arisen before the tenth day of November, one thousand eight hundred and one, the Courts of civil judicature are not to decree higher or lower rates of interest, than the following.—*Reg. 34, 1803, Sect. 2, Cl. 1.*

May not exceed 100 sicca rupees,

12. On sums not exceeding one hundred sicca rupees, two rupees and eight annas per cent. per mensem, or thirty per cent. per annum.—*Ibid. Cl. 2*

May exceed that sum.

13. On sums exceeding one hundred sicca rupees, two per cent. per mensem, or twenty-four per cent. per annum.—*Ibid. Cl. 3.*

Rates of interest where the cause of action shall have arisen after the 10th Nov 1801, to be 12 per cent

14. If the cause of action shall have arisen on, or subsequent to the tenth day of November, one thousand eight hundred and one, the courts are not to decree interest on any sum whatever, above the rate of twelve per cent. per annum.—*Ibid. Sect. 3.*

[The Dooab, and on the right bank of the Jumna with Bundelkand.]

Reg 33 & 34, 1803, extended to zillahs specified in sec. 3, with the following modification

15. Regulations 33 and 34, 1803, are hereby extended to the zillahs specified in Section 3, with the following modification of the Regulation last mentioned.—*Reg. 8 1805, Sect. 23, Cl. 1.*

What dates to be substituted for that specified in sec 2, 3 & 9, reg 34, 1803, & for that specified in sec 7 & 8 of the said regulation.

16. The 30th of December, 1803, shall be the date to be adopted in the zillahs of Allyghur, Agra, and the northern and southern division of the zillah of Seharumpore ; and the 16th December, 1803, shall be the date to be adopted in the zillah of Bundelkand. in lieu of the date specified in Sections 2, 3 and 9, Regulation 34, 1803. The 1st of January, 1805, shall be adopted in the whole of the above zillahs, in lieu of the date specified in Sections 7 and 8, of the said Regulation.—*Ibid. Cl. 2.*

[Cuttack.]

Rules respecting the payment of interest upon money

17. The following rules shall be observed in the zillah of Cuttack, including the pargunnahs of Puttaspore, Kummarchehour, and Bograe, respecting the payment of interest on money.—*Reg. 14, 1805, Sect. 9, Cl. 1.*

Rule when the cause of action shall have arisen before the 14th October, 1803.

18. If the cause of action shall have arisen before the 14th of October, 1803, the Courts of civil judicature are not to decree a higher or lower rate of interest than the following, unless a lower rate of interest shall have been stipulated to be paid by the parties in the suit.—*Ibid. Cl. 2.*

19. On sums not exceeding one hundred sicca rupees, two rupees and eight annas per mensem, or thirty per cent. per annum.—*Reg. 14, 1805, Sect. 9, Cl. 2.* May not exceed 100 sicca rupees, or

20. On sums exceeding one hundred sicca rupees, two per cent. per mensem.—*Ibid* May exceed that sum

21. If the cause of action shall have arisen on, or subsequently to, the 14th of October, 1803, the courts are not to decree interest on any sum whatever above the rate of twelve per cent. per annum.—*Ibid, Cl. 3.* No greater interest than 12 per cent per annum to be decreed when the cause of action shall have arisen subsequently to the 14th Oct. 1803.

22. The courts are not to decree any interest whatever, in any case, where the bond or instrument given for the security and evidence of the debt, shall have been granted on, or subsequently to, the 14th day of October, 1803, and shall specify a higher rate of interest than is authorized in clause third of this section.—*Ibid, Cl. 4.* No interest shall be decreed in cases wherein the bond, &c. granted subsequent to the above date, shall stipulate a higher interest than 12 per cent per annum

## SECTION II

### *General Rules regarding the Award of Interest*

23. Upon similar principles it has been ruled by the Court that a party having sued for the principal of a debt without including interest, must be presumed to have relinquished his claim to the interest accruing prior to the action, and cannot institute a second suit to recover such interest after obtaining a decree for the principal, as this would amount to a splitting of the cause of action, which is contrary both to the Regulations and the established practice of the courts. The same principle would of course apply to "wasilut" or mesne profits, for any period antecedent to the institution of a suit for the proprietary right in the land or other real property on which it may be claimed, which may not have been included in such suit.—*Cir. Ord. Cal and West. C. 11th Jan. 1839, par. 6.* The court has ruled that a party suing for the principal of a debt without interest, is presumed to have relinquished it, and cannot institute a second suit for it. The same rule applies to wasilut.

24. If a party sue for the principal of a debt in a court which he knows is not competent to adjudge a larger amount, without, at the same time, claiming interest, he must be presumed to have relinquished his claim to interest, and cannot, after having obtained a decree for the principal, institute a second suit to recover the interest, as this would amount to splitting the cause of action so as to render a suit cognizable by a particular court of inferior jurisdiction, which is opposed to the practice of the courts.—*Com. 1182, Cal and West C. 2d Nov. 1838.* Idem

25. Claim by respondent to interest, during two appeals, on the amount of a zillah decree, passed in his favor and confirmed in each appeal. Claim adjudged \*—*S. D. A. Sel Rep. 19th Aug 1806, vol. 1, p. 154.* Claim adjudged to a respondent during two appeals on the amount of the zillah decree

26. Interest, and damages liquidate, under special covenant,—which a plaintiff omitted to include in a former action, in which, he recovered principal—recoverable in a special action, —on proof of being due.—*S. D. A. Sel Rep. 19th April 1831, vol. 5, p. 115.* Case in which interest not included in a former action is recoverable in a subsequent action

\* This decision may be considered a precedent for admitting a new suit, to supply an evident defect in a former decree, with respect to interest on the amount adjudged. It does not clearly appear why interest on the sum adjudged by the zillah decree of April, 1791, was not included in the confirmatory judgment passed by the Snadder dewanny adawlut in August, 1802. But it is presumable that the court, in not applying the rule contained in Section 3, Regulation 13, 1796, supposed the decree of the zillah Judge to have been carried into execution.

This is a precedent for admitting a new suit to supply an evident defect in a former decree with regard to interest on the sum adjudged

In an appeal from the decree of a zillah court, founded on an award of arbitrators, charged with partiality and corruption, if the appeal is dismissed interest must be awarded from the date of the zillah decree.

27. In case of appeal to the Provincial court from the decree of a Zillah court, founded on the award of arbitrators, alleged to have been guilty of partiality and corruption, should the charge not be proved and the appeal be dismissed, interest must, according to the provisions of Section 3, Regulation 13, 1806, be awarded from the date of the zillah decree, even though the Provincial court do not go into the merits of the case.—*S. D. A. Sel. Rep.* 17th Nov. 1810, vol. 1 p. 312.

Where interest is not included in the claim, the court cannot award it.

28. Where A did not include interest in his claim against B., it was held that the court could not award it.—*S. D. A. Sel. Rep.* 31st July 1832, vol. 5, p. 218.

The institution of a suit before the money is due, is not a ground for refusing interest after the debt is due, but is sufficient for refusal of costs, or nonsuit.

29. Held that the institution of a suit for the recovery of a debt before the time specified for payment is not a sufficient reason for depriving the creditor of interest after the debt has become due, though sufficient for refusal of costs, or for nonsuit.—*S. D. A. Sel. Rep.* 12th Feb. 1821, vol. 3, p. 68.

The courts cannot strike off interest for delay in suing for a debt.

30. The courts are not competent to strike off interest on the ground of delay in suing for a debt if the claim be otherwise cognizable.—*S. D. A. Sel. Rep.* 7th Aug. 1820, vol. 3 p. 48.

*Ibid.*

31. In an action for recovery of a debt on bond, the Civil courts are not competent to dismiss a claim for interest solely on the ground of delay in suing for the debt.—*S. D. A. Sel. Rep.* 2d June 1812, vol. 7, p. 111.

Lower rates of interest than those authorized in Sec. 2, 3 & 4, to be decreed, if stipulated between the parties.

32. If in any of the cases specified in Sections 2, 3 and 4, a lower rate of interest, than any of the rates therein authorized to be awarded, shall have been stipulated between the parties, no higher rate of interest than the rate so stipulated, is to be decreed.—*Reg.* 15, 1793, Sect. 5.—*Benares Reg.* 17, 1806, Sect. 2.—*Ced. and Cong. Prov. Reg.* 24, 1803, Sect. 4.

If the specific contract in the bond be for 12 per cent interest, it should be strictly maintained.

33. In actions brought for the recovery of money lent on bond, or other written documents the rate of interest stipulated between the parties is generally twelve per cent. per annum, and in such cases, the specific contract between the parties should be strictly maintained.—*Civ. Ord. Cal. C.* 7th April West. C. 5th May 1837, par. 2.

But where no specific stipulation exists, the courts will exercise a sound discretion in awarding interest, not exceeding 12 per cent. and mesne profits.

34. In cases, however, wherein mesne profits of landed property may be adjudged, or any other claim adjudicated, in which no specific stipulation may exist, the Courts are of opinion that the several courts of law are authorized to exercise a sound and equitable discretion in awarding the rate of interest to be paid, not of course exceeding twelve per cent. per annum.—*Ibid.* par. 3.

Compound interest on intermediate adjustment of accounts not to be allowed.

To what cases this rule is not to extend.

35. The courts are not to decree any compound interest, arising from intermediate adjustments of accounts. This rule, however, is not to extend to cases in which accounts between the parties shall have been adjusted, and the former bonds or agreements cancelled, and new bonds or agreements taken, for the aggregate amount of the principal, and the legal interest remaining due upon the adjustment, consolidated into principal.—*Reg.* 15, 1793, Sect. 7.—*Benares Reg.* 17, 1806, Sect. 2.—*Ced. and Cong. Prov. Reg.* 24, 1803, Sect. 6.

36. I am desired to communicate to you the opinion of the Court, that the provisions of the Regulation above cited, [viz. Regulation 34, 1803, or in Bengal, Regulation 15, 1793,] are applicable to loans of money only.—*Con.* 487, 12th Sept. 1828, par. 2.

Reg. 15, 1793, and the other corresponding regulations refer only to loans of money.

37. The rules contained in the preceding sections, [viz. the sections of Regulation 15, 1793, are not to be considered to extend to respondentia loans or policies of insurance, the interest on which is to be regulated by the terms of the deeds, and the laws and usages which prevail respecting such transactions.—*Reg.* 15, 1793, *Sect.* 12.—*Benares Reg.* 17, 1806, *Sect.* 5.—*Ced. and Cong. Prov. Reg.* 34, 1803, *Sect.* 11.

Rules in the preceding section not to extend to respondentia loans or policies of insurance

38. It is therefore hereby enacted, that upon all debts or sums certain payable at a certain time or otherwise, the court before which such debts or sums may be recovered, may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise than from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law. —*Act XXXII.* 1839.

Upon all debts, &c. the court may allow interest at the current rate, from the due day when such debts, &c. were payable by a virtue of a written instrument, or, if payable otherwise, from time of demand of payment, & notice that interest will be required.

39. An objection to the payment of a deposit to the party entitled to receive it, found on investigation to be insufficient, renders the objector hable for interest on the deposit during the period of detention.—*S. D. A. Sel. Rep.* 3d April 1846, vol. 7, p. 260.

In what case interest is chargeable on a deposit during its detention.

40. In the case of a bond bearing interest at six per cent., the court will award payment of twelve per cent., on proof that the debtor violated an engagement made to the creditor to put him in possession of a farm, as collateral security.—*S. D. A. Sel. Rep.* 17th May 1824, vol. 3, p. 356.

Case in which the court will award 12 per cent. on a bond bearing interest at 6 per cent.

41. Interest may be awarded on the amount decreed on 9th February, 1820, not realized till March, 1832, provided the delay in realizing it was not owing to the default of the decree-holder.—*Con.* 690, 4th May 1832

When money was not realized till 12 years after it was decreed, and the delay did not arise from the decree-holder's default, interest may be awarded.

42. Interest on rent disallowed in consequence of neglect to sue or make intermediate demand.—*S. D. A. Sel. Rep.* 6th May 1836, vol. 6, p. 67

Interest on rent disallowed for certain reasons

### SECTION III.

#### *Forfeiture of Interest for stipulation of higher than Legal Interest*

43. The Courts are not to decree any interest whatever, in any case, where the bond or instrument given for the security and evidence of the debt, shall have been granted on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, and shall specify a higher rate of interest, than is authorized by this Regulation to have been given and received subsequent to that date.—*Reg.* 15, 1793, *Sect.* 8.—*Benares Reg.* 17, 1806, *Sect.* 2.—*Ced. and Cong. Prov. Reg.* 24, 1803, *Sect.* 7

Cases in which the interest on bonds or instruments executed on or subsequent to the 28th March, 1780, is to be forfeited

The forfeiture of principal and interest in the cases herein specified, enacted by sec 8, reg. 15, 1793 not to be considered applicable to bona fide loans contracted, or bonds executed, previously to the period specified in sec. 2.

44. The forfeiture of interest for stipulation of a higher rate, than what is authorized, enacted by Section 8, Regulation 15, 1793; and the forfeiture of principal and interest, in cases of attempts to elude the prescribed rules, by deductions from the principal, or other devices provided against by Section 9, Regulation 15, 1793, shall not be considered applicable to any loans actually and bona fide contracted, or to any bonds or other instruments voluntarily given for the evidence and security of such loans previously to the period stated in Section 2 of this Regulation.—*Reg. 17, 1806, Sect. 5.*

Where, under a deed of *bye-bil-wufa*, the deed of mortgage stated the legal interest, and an additional per cent was stipulated in a separate bond, the claim was disallowed.

45. In a suit to obtain possession of certain premises under a deed of *bye-bil-wufa*, the mortgage having been foreclosed and the sale become absolute: it appearing that one *per cent per mensem* was the sum stipulated to be paid as interest in the deed of mortgage, but that the mortgagee had received a separate bond engaging the payment of one additional *per cent.* interest, such proceeding was held to be contrary to the provisions of Regulation 17, 1806, and the claim was accordingly disallowed.—*S. D. A. Sel. Rep. 24th Jan. 1826, vol. 4, p. 106.*

Case in which the legal interest was not forfeited, though a second bond at a higher rate of interest was given, while the first was uncanceled

46. A bond having been executed before the 1st January, 1804, in Allahabad, bearing interest at the rate of *twelve per cent. per annum*, and subsequent to that date a second bond [the first remaining uncanceled] for the same debt at a higher rate of interest, held that agreeably to Regulation 34, 1803, the legal interest is not thereby forfeited.—*S. D. A. Sel. Rep. 18th June 1821, vol. 3, p. 96.*

Penalty for illegal interest decreed in the case of two bonds, the first executed in 1781, and the second in 1784.

47. Penalty for illegal interest declared in Section 8, Regulation 15, 1793, [*i. e.* forfeiture of interest] applicable to interest exceeding rates fixed by antecedent Regulations from 28th March, 1780, and applied to interest on two bonds at twenty-five per cent. per annum, the first dated in 1781, the second in 1784, although payment had been made under the former bond in discharge of the principal and interest and the second bond was given for the balance.—*S. D. A. Sel. Rep. 24th June 1805, vol. 1, p. 93.*

The interest forfeited in a case of *bye-bil-wufa*, where the stipulation of interest beyond the legal

48. In a case of *bye-bil-wufa*, or mortgage and conditional sale, the condition of re-sale being virtually a stipulation for interest beyond the legal rate, the transaction was held to be in violation of Section 8, Regulation 15, 1793, and the interest liable to forfeiture.—*S. D. A. Sel. Rep. 29th April 1815, vol. 2, p. 146.*

A surety exacting more than the legal interest on an advance of govt revenue, to compensate his risk, is not an evasion of the usury law.

49. Held, that it is not an evasion of the usury Regulation for a surety to exact more than the legal interest, on advance of Government revenue made by him, as compensation for his risk.—*S. D. A. Sel. Rep. 23d Aug. 1823, vol. 3, p. 261.*

Particular case decided by the S. D. A. as not involving a device to evade the usury laws.

50. A received an advance from B., as a loan free of interest for a given time, and gave a concurrent lease of an estate, at a fixed rent, which was less than the *sudder jumma*, and engaged that B. should hold on the farm until the sum borrowed was paid. A. sued B. to set aside the lease and recover, as cancelled, his bond, on the ground, that the lease was a device to evade the usury law, that the transaction was virtually a mortgage, and that the debt had been replaced by the profits of the estate. Claim of A. dismissed, as the transaction did not appear to the court to be a device as charged; and the right of B. to hold over was sustained.—*S. D. A. Sel. Rep. 1st Feb. 1830, vol. 5, p. 8.*

## SECTION IV.

*Forfeiture of Principal and Interest for attempts to evade the Laws.*

51. Nor to decree any interest whatsoever in favor of the plaintiff, in any case, where the cause of action shall have arisen on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, where a greater interest than is authorized by this Regulation shall have been received, or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed in it by any deduction from the loan, or by any device or means whatever, nor to give any other judgment, but for the dismissal of the suit, with costs to be paid by the plaintiff.—*Reg. 15, 1793, Sect. 9—Benares Reg. 17, 1806, Sect. 2.—Cid. and Cong. Prov. Reg. 24, 1803, Sect. 8.*

Suit to be dismissed with costs, where the cause of action shall have arisen on or subsequent to the 28th March, 1780, if any attempt is made to evade this regulation.

52. A., a *Musulman*, sued B. for possession of a village under a deed of mortgage and conditional sale for 2081 rupees redeemable in five years. It appearing that A. lent to B. only 1300 rupees, and, to avoid the imputation of taking interest, consolidated the interest of that sum for five years with the principal, and caused the aggregate to be entered in the bond as principal; adjudged that he was not entitled to possession of the village, at the expiration of the period of redemption. The Court however ordered that he should recover the principal sum actually lent, with interest thereon, as there had been no attempt to obtain usurious interest beyond the legal rate.—*S. D. A. Sel. Rep. 16th March 1818, vol. 2, p. 255.*

Particular case of a Musulman consolidating principal and interest to avoid the imputation of taking interest.

53. The original amount of a loan is not forfeited in consequence of the stipulation of illegal interest; nor is a bond taken on the adjustment of the balances of a debt, bearing such illegal interest, held to be an attempt to elude the Regulations and to obtain interest upon interest, which would involve a forfeiture of principal.—*S. D. A. Sel. Rep. 24th June 1805, vol. 1, p. 93.*

A bond taken on the adjustment of the balances of a debt bearing illegal interest, does not involve the forfeiture of the principal.

54. The advance of a loan in Government securities, at par, which at the time were at discount, held, under the circumstances, to be no evasion of the interest law of Regulation 15, 1793.—*S. D. A. Sel. Rep. 15th July 1816, vol. 7, p. 254.*

The advance of a loan in govt securities at par, which were then at a discount, no evasion of the interest law of reg 15, 1793.

55. In a case where money was borrowed and a bond executed for the payment thereof with interest at the legal rate of *twelve per cent per annum*, and afterwards another bond executed for the payment of *half per cent. per mensem* as *nehonutana*, the court held that no part of the original debt was recoverable, even though no illegal interest had been received.—*S. D. A. Sel. Rep. 23d Jan. 1823, vol. 3, p. 205.*

Where money was borrowed on a bond at 12 per cent, and another bond was executed at half per cent. for *nehonutana* the original debt is recoverable, though no illegal interest had been received.

56. The open and avowed stipulation of increase, on a loan, at a rate greater than the legal interest [declared to include interest and mercantile excess, *budhi sacca*] is not a device to evade, which within Section 9, Regulation 15, 1793, operates forfeiture of principal and interest; but under Section 8, occasions loss of interest only.—*S. D. A. Sel. Rep. 2d Feb 1830, vol. 5, p. 10.*

The open and avowed stipulation of increase, on a loan at a higher rate than legal interest, does not cause forfeiture of principal and interest.



In case of a loan bearing interest, a small reduction as *dharat*, or discount, renders the dismissal of the claim necessary

57. Where, in a case of loan secured by bond, bearing interest, a small reduction has been made, as *dharat* or discount, it was held, that was a device within the meaning of Section 9, Regulation 15, 1793, and rendered the dismissal of the claim necessary.—*S. D. A. Sel. Rep.* 20th Dec. 1830, vol. 5, p. 79.

In a case of *bye-bil-wafu* the lender having exacted illegal interest, by deducting from the principal, the claim was dismissed.

58. In a case of *bye-wul-wafu*, the lender having exacted illegal interest, by deduction from the principal, the Sudder dewanny adawlut, with reference to Section 9, Regulation 17 of 1806, dismissed his claim for the land conditionally sold.—*S. D. A. Sel. Rep.* 17th Jan. 1831, vol. 5, p. 81.

The gratuitous conveyance of lands without payment of a consideration is an usurious device under sec 9, reg 15, 1793.

59. The Sudder dewanny adawlut considered the gratuitous conveyance of lands, without payment of any consideration, to be an usurious device, under Section 9, Regulation 15, 1793 —*S. D. A. Sel. Rep.* 28th Feb. 1831, vol. 5, p. 346.

## SECTION V.

*Interest pending the Suit or Appeal, or from the date of the Decree, till full payment.*

Interest to be allowed on sums adjudged by the decree appealed from, if confirmed, and litigious appeals to be punished by fine

60. To prevent an abuse of the above rule, and the encouragement of litigious appeals, the Provincial courts of appeal in all cases wherein they may confirm the decree of a Zillah or City court, and the Sudder dewanny adawlut, in all cases wherein it may confirm the decree of a Provincial court, are to adjudge interest at the rate of one per cent. per mensem on all sums, receivable by the respondent under the decree passed in his favour, from the date of such decree, and are authorized to punish appeals which may appear to them litigious, by a fine to Government, proportionate to the condition of the party, and the circumstances of the case. —*Reg.* 13, 1796, *Seet* 3.

Rules for the calculation of interest on sums decreed in original suits and in appeals

61. The [Sudder] Court, having observed that the practice of the courts is not uniform in regard to the calculation of interest on sums of money decreed in original suits, and in appeals from such decisions, have resolved that the following rules be promulgated for the information of the zillah and city Judges, and their subordinate courts in continuation of that of the 2d October, 1835 (No. 155 of this volume).—*Ca. Ord* 4th March 1836, *par* 1.

The court will decree the principal with interest, from the day the loan was made or became due to the date of the decree, and further interest on "this sum" to the day of payment. Rule when the interest exceeds the principal

62. When a principal sum and interest thereon claimed in an original suit shall be adjudged to be due, the court shall decree the principal with interest from the date on which the loan was made, or the sum claimed became due, up to the date of the decree, (provided the interest do not exceed the principal, when a sum equal to the principal shall be allowed, except in the case provided for by the Circular order of the 19th December, 1823,) with further interest on this sum until the date of payment.—*Ibid*, *par.* 2.

Explanation of 'this sum', as above, it includes principal with interest from a certain up to a certain date.

63. Misapprehension having been found to exist respecting the meaning of a part of paragraph 2 of Circular order of the Sudder dewanny adawlut, No 171, dated 4th March, 1836,—viz as to *What sum* is alluded to at the end of that paragraph in the words "with further interest on *this sum* until the date of payment," it being understood by some to refer to the aggregate sum, principal and interest, mentioned in a former part of the sentence and by others, to mean the principal alone, it is hereby explained by the Courts of Sudder dewanny

adawlut at Calcutta and Allahabad that the "sum" in question is meant to designate the principal with interest from a certain up to a certain date mentioned, which the court is directed to decree, a reading which the omission of the parenthetical sentence will render quite obvious.—*Cir. Ord. 12th Aug. 1812, par. 1.*

64. If the decision shall be confirmed in appeal, the Appellate court must, under Section 3, Regulation 13, 1796, award interest from the date of such decree to the day of payment on the aggregate of the principal, interest, and costs awarded by the original decree.—*Cir. Ord. 4th March 1836, par. 3.*

If the decision be confirmed in appeal, the appellate court will award interest from the date of such decree to the day of payment on the aggregate of principal, interest and costs.

65. In like manner, if the claim was dismissed by the lower, but decreed by the Appellate court, interest shall be calculated on the principal sum to the date of the decision of the lower court as before, and on that consolidated sum of principal and interest, and the costs to the day of payment.—*Ibid, par. 4.*

If the case was dismissed in the lower but decreed in the appeal court, interest will be calculated on the principal to the date of decision below, and from that to the day of final payment, on the consolidated principal, interest and costs.

66. The Court having reason to believe that some of the zillah and city Judges are in the habit, on confirming the decree of a lower court in cases of appeal, of awarding interest on the sum decreed at a less rate than one per cent. per mensem, apparently under the impression that the matter is left altogether to their discretion, I am directed to call your attention to the provisions of Section 35, Regulation 4 of 1803, (Section 3, Regulation 13, 1796,) by which the Provincial courts of appeal were required to adjudge the full rate of interest in cases of the above nature, and with reference to the object of that enactment, viz. the prevention of litigious appeals, and to the situation in which the zillah and city Judges are now placed by the abolition of the Provincial courts, to communicate to you the opinion of the Court, that the principle of the rule, the terms of which are imperative, must be considered equally applicable to the decisions of the former officers, and you are accordingly requested to adopt this construction in future.—*Cir. Ord. Cal and West. C. 2d Oct 1835.*

The zillah courts when confirming the decree of a lower court in appeal, cannot award less than the 12 per cent. ordered in sec 3, reg. 13, 1796.

67. The Court have directed me to add, that the [above] construction is not to be considered as interfering with the rules prescribed by Section 3, Regulation 13, 1796, and Section 35, Regulation 4, 1803, which require the Appellate courts to award interest on the amount decreed by the courts of primary jurisdiction at the rate of twelve per cent. per annum.—*Cir. Ord. Cal. C. 7th April, West. C. 5th May 1837, par. 5.*

*Idem.*

68. Judgment for principal and interest of a bond debt, together with interest on the aggregate sum from the date of the suit, confirmed on appeal to the Provincial court, with interest on the amount of the judgment, but interest while the cause was pending in special appeal before the Sudder dewanny adawlut, calculated on the amount of the original bond only.—*S. D. A. Sel. Rep. 29th Nov. 1823, vol. 3, p. 268*

While a cause was pending in special appeal before the S. D. A., interest was calculated only on the original bond.

69. In an action for debt, simple interest only is to be allowed to the date of the decree of the Court of original jurisdiction, the Sudder dewanny adawlut modified the decree of a lower court, which consolidated the principal and interest to the date of the petition of plaintiff, and awarded interest on the aggregate sum forward from such date.—*S. D. A. Sel. Rep. 28th Dec. 1841, vol. 7, p. 66.*

When a lower court consolidated the principal and interest to the date of the petition of plaintiff, the S. D. A. allowed simple interest only

Under particular circumstances, the highest legal interest allowed from the date of the decree to the date of payment, though the bond was for a lower sum.

70. The highest legal rate of interest awarded, under the circumstances, from the date of the decree to the date of payment, notwithstanding that the bond on which the decree was founded specified a lower rate of interest.—*Rep. Sum. Cases, 2d June 1833, p. 8.*

The courts should insert in the decree a clause for interest till it is executed, when this is omitted, the court may at any time order the payment of interest without a new suit.

71. The Court are of opinion, that in all cases where money liable to bear interest is payable under the decree of a court, a clause should be inserted in the decree, providing for the allowance of interest until the decree is carried into final execution; and that, in the event of such provision being omitted in a decree the court, by which the same may have been passed, is competent to order at any future period the payment of the interest on the amount decreed which may have accumulated subsequently to the date of the decree, without referring the party to a new suit for the recovery of such interest, and that the same principle is applicable to profits in cases of decrees for landed property.—*Civ. Ord. 11th Sept 1829, par. 2.*

Rules for the calculation of interest in such cases

72. With respect to cases, in which money liable to bear interest is payable under a decree of court, it has been laid down in the Court's Circular letter of the 11th September, 1829, that a clause should be inserted in the decree providing for the allowance of interest until the decree is carried into final execution; that in the event of such provision being omitted in the decree, the court by which the same may have been passed, is competent, on the summary application of the decree-holder, after due investigation, and hearing any pleas urged by the opposite party, to order payment of interest on the amount decreed, either for the whole period that may have elapsed subsequently to the date of the decree, or for such part of it as under the circumstances of the case may appear just and equitable, without referring the party to a new suit for the recovery of such interest: and that the same principle is applicable to profits in cases of decrees for landed property. The rules for the calculation of interest on sums decreed in original suits and appeals, will be found contained in the Circular orders of the 2d October, 1835, 4th March, 1836, and 7th April, 1837.—*Civ. Ord. Cal. and West C' 11th Jan 1839, par. 8.*

When the court has omitted to provide in its decree for the interest accruing after the institution of the suit, the decree-holder may apply for a review of judgment to have the omission supplied

73. With regard to interest or "wasilat" accruing subsequently to the institution of a suit, and while it may be pending, the Court observe, that the practice has hitherto been, when the court deciding the case may have omitted to provide in its decree for payment of the same, to allow the decree-holder to institute a second suit to remedy the defect in the former decision. Deeming such practice, however, open to objections, the Court are of opinion that it should be discontinued; and as the court deciding the case is obviously the proper authority to determine whether the party in whose favour the decree may pass, is entitled to interest, or "wasilat," for the time the suit may have been pending, where it may omit to make provision on this point in its decree, the decree-holder, instead of instituting a second suit for the amount, should apply for a review of judgment, in order that the omission may be supplied. His application, if presented within the period allowed by law for such applications, should be received on stamped paper of the value prescribed for miscellaneous petitions in the court in which it may be filed; but if given in after the expiration of that period, it must then be on stamped paper of the full value agreeably to Clause 1, Section 2, Regulation 2 of 1825, and the Construction contained in the letter to the address of the late Court of Appeal at Moorsheadabad, under date the 15th December, 1828, No. 490 of the Construction book. The Court direct me to add that as the practice now in force, as above explained, is sanctioned by precedents, the present rule can of course only have prospective effect.—*Ibid, par. 7.*

74. A, having sued B. in the Court of appeal, obtains judgment with an award of interest from the date of the decision. On appeal by B. judgment confirmed on the merits of the case. A. afterwards sues B. in the City court for interest from the date of institution of the original suit. Held, that the claim is cognizable to supply a defect in the former decree.—*S. D. A. Sel. Rep.* 19th Nov. 1821, vol. 3, p. 127.

A second suit admitted for interest, from the day of institution of the suit to the day of decision, to supply a defect.

## SECTION VI.

### *Interest on Costs.*

75. The Court having had under their consideration the Circular order, No. 171, of the 4th March, 1836, are of opinion that interest on the costs of suits should be granted in all cases, whether the claim be for money, land, or any other description of property.—*Con.* 1095, *Cal.* C. 30th June, *West. C.* 21st July 1837.

Interest on costs should be granted in all cases.

76. The Court are of opinion that when the costs of suit are included in the decree, they become part of the matter awarded by the court passing the decree, and as such are liable with other property so adjudged, to interest from the date of the Court's decision.—*Con.* 715, *West. C.* 7th Sept., *Cal. C.* 5th Oct. 1832.

The costs when included in the decree, are liable with other property so adjudged to bear interest from the date of the court's decision.

77. It is further noticed that under Construction No. 715, the costs which may be awarded, may be separately chargeable with interest from the date of the decree up to the date of payment.—*Cir. Ord.* 12th Aug. 1842, par. 2.

Costs may be separately chargeable with interest from the date of payment.

## SECTION VII.

### *Interest exceeding Principal.*

78. If the interest on any debt, calculating according to the rates allowed by this Regulation, shall have accumulated so as to exceed the principal, the courts are not in any case whatever, (excepting the cases specified in Section 12,) to decree a greater sum for interest, than the amount of such principal.—*Reg.* 15, 1793, *Sect.* 6—*Benares Reg.* 17, 1806, *Sect.* 2.—*Ced. and Conq. Prov. Reg.* 24, 1803, *Sect.* 5.

Courts not to decree a greater sum for interest, than the amount of the principal, in any case.

79. On the institution of a suit to recover principal and interest on a bond, the interest should be calculated up to the time of the plaint; but the Sudder dewanny adawlut passed a judgment in favour of the lender for the recovery of the principal of the bond with interest from the date of the bond, to that on which the final decree should be carried into execution. The Court determined that the restriction contained in Section 6, Regulation 15, 1793, against a judgment for interest exceeding the principal, when the legal interest "shall have accumulated so as to exceed the principal," is not applicable to a case in which the accumulation is subsequent to the institution of the suit, and not ascribable in any degree to procrastination on the part of the creditor.—*S. D. A. Sel. Rep.* 15th July 1805, vol. 1, p. 242.

The restriction contained in sec. 6, reg. 15, 1793, is not applicable to a case in which the accumulation of interest is subsequent to the institution of the suit.

Further explanation of this case.

\* The plaintiff in this case sued for principal and interest of the sum due to him, and calculated the interest up to the time of his plaint. This was all he could be expected to do, and there was evidently no just reason for depriving him of the further interest which became due, under the defendant's denial of his claim, during the long period it was under investigation. He might perhaps have acquiesced in the judgment of the City court, if the defen-

The restriction against a judgment for interest exceeding the principal is not applicable when the accumulation is subsequent to the institution of the suit.

80. The Court at large have resolved to adhere to the construction contained in the decision [of the 15th July, 1808,] namely, that the restriction contained in the section above quoted, against a judgment for interest exceeding the amount of the principal, when the legal interest shall have accumulated so as to exceed the principal, is not applicable when the accumulation is subsequent to the institution of a suit; and therefore not ascribable to procrastination on the part of the creditor.—*Con* 359, 19th Dec. 1823.

The rule in that section relates only to interest unpaid & in arrear, and a sum equal to the principal is recoverable as interest, exclusive of the payment made.

81. In a suit for the amount of two bonds, with an equal sum as interest, [under Section 6, Regulation 15, 1793, the interest due having exceeded the principal] one payment of interest is admitted, but it appears that the interest due since the payment exceeds the principal. The court hold that the rule contained in the Regulation quoted, relates only to interest unpaid, and in arrear, and that a sum equal to the principal is recoverable as interest, exclusive of the payment made.\*—*S. D. A. Sel. Rep.* 29th Nov. 1809, vol. 1, p. 294.

The courts may award interest exceeding the principal of a debt, which has accrued during the suit.

82. Held that according to the spirit of Section 6, Regulation 15, 1793, the courts may award interest exceeding the principal of a debt, if the excess accrued *pendente lite*, and without any fault of the creditor.—*S. D. A. Sel. Rep.* 19th Dec. 1823, vol. 3, p. 270.

*Idem.*

83. Interest exceeding principal may be awarded when the excess has accrued subsequently to recourse to law for the recovery of the debt.—*S. D. A. Sel. Rep.* 5th Sept. 1827, vol. 4, p. 261.

Case in which the S. D. A. allowed the principal and unpaid sum as interest, and 12 per cent. on the aggregate to the day of payment.

84. In a suit to recover a debt, the Provincial court awarded principal and interest to the day of payment, provided the interest did not exceed the principal. The Sudder dewanny adawlut allowed the principal and an equal sum as interest, together with twelve per cent interest, on the aggregate sum from the date of their decree to the date of payment.—*S. D. A. Sel. Rep.* 3d Dec. 1825, vol. 4, p. 95

## SECTION VIII

### *Wasilat, or Mesne Profits.*

Claim for mesne profits augmented by interest, is denied, though it exceed the principal of the estimated rent, owing to peculiar circumstances.

85. Claim by a party ejected from land, for mesne profits, augmented by interest, is decreed; and Section 6, Regulation 15, 1793, is held not to bar the award of such augmentation, although exceeding the principal of the estimated rent, such award appearing to be required for the equitable indemnity of the party injured with reference to circumstances.—*S. D. A. Sel. Rep.* 19th July 1830, vol. 5, p. 48.

Interest on mesne profits refused for delay in bringing the action.

86. The court refused interest on mesne profits in consequence of delay in bringing the action.—*S. D. A. Sel. Rep.* 6th Feb. 1836, vol. 6, p. 52

dant had not appealed. But having been kept out of the receipt of his money by two appeals, the Sudder dewanny adawlut considered it just to let him receive the full benefit of the appeal to that court. It may be added, that the restriction contained in Section 6, Regulation 15, 1793, against a judgment for interest exceeding the amount of the principal when the legal interest shall have accumulated so as to exceed the principal, was not applicable in the present instance, where the accumulation was subsequent to the institution of the suit, and not ascribable in any degree to procrastination on the part of the creditor. *Note to the above case.*

\* A great deal of difference exists respecting the construction of Section 6, Regulation 15, 1793. Many courts thinking with the Judge of the court, that in no case can the amount of interest adjudged by decree of court, exceed the amount of principal. The decision of the Sudder, independent of its authority is undoubtedly most consonant to the literal meaning of the Regulation.—*Note to the above case.*

87. Illegal collections cannot be taken into account in the adjustment of mesne profits.—*Rep. Sum. Cases, 10th Feb. 1846, p. 75.*

Illegal collections not to be taken into account in adjusting mesne profits

88. A sale of real property (made in execution of a decree) being cancelled, the court may, by a summary order, award recovery of mesne profits, accruing during possession held by the auction purchaser, and interest thereupon from the date of the proceeding fixing the amount of profits.—*Rep. Sum. Cases, 13th March 1844, p. 3.*

A sale of real property in execution of a decree being cancelled, the auction purchaser is answerable for mesne profits and interest during possession

89. In an action for recovery of mesne profits, held that the plaintiff was rightly nonsuited for omitting to state the amount, and the period for which it was alleged to be recoverable.—*Rep. Sum. Cases, 25th July 1842, p. 37*

A plaintiff nonsuited for not stating the amount of mesne profits, & the period for which he sought to recover them

90. In a suit for land and mesne profits the Zillah court gave a decree in favour of the plaintiffs for a fractional portion of the land, leaving the quantity as well as the amount of mesne profits to future adjustment in the course of execution of the decree. Held, that the decree was incomplete and re-investigation ordered.—*S. D. A. Sel. Rep. 2d Dec. 1840, vol. 6, p. 305*

A decree is incomplete and re-investigation must take place, if the decree is passed for a fractional portion of the land, leaving the quantity & the mesne profits to future adjustment

91. In an action for land and mesne profits, the Zillah Judge having awarded the former and left the latter for future decision and adjustment, the Sudder dewanny adawlut held that the decree was incomplete, and remanded the case with instructions to the Judge to pass judgment on the entire claim.—*S. D. A. Sel. Rep. 17th March 1842, vol. 7, p. 77.*

Idea

92. It is irregular to award mesne profits in general terms and without specification of period for which they are recoverable.—*S. D. A. Sel. Rep. 3d Dec. 1840, vol. 6, p. 306.*

The period for which mesne profits are awarded must be specified

93. A claim to mesne profits of certain lands which had been adjudged to the plaintiffs under a decree founded on an arbitration award performed nearly twelve years after the date of decree, dismissed on the presumption that the arbitrators had adjusted all differences between the parties respecting the disputed lands.—*S. D. A. Sel. Rep. 19th Jan. 1841, vol. 7, p. 7*

A claim to mesne profits adjudged to the plaintiffs by arbitration, made 12 years after the date of the decree, dismissed on the grounds

94. Mesne profits cannot be awarded at a higher rate than that specifically claimed by the plaintiff in the Court of first instance.—*Rep. Sum. Cases, 14th Aug. 1847.*

Mesne profits cannot be awarded at a higher rate than were originally claimed.

95. Judgment for mesne profits against a third party, not a party to the cause overruled.—*S. D. A. Sel. Rep. 30th June 1842, vol. 2, p. 19.*

Judgment for mesne profits against a third party overruled

96. The Sudder dewanny adawlut adjudge waslat with interest from the date of a decree, against the heir of the party who failed in that decree, by whose bad faith the gaming party had been kept out of possession.—*S. D. A. Sel. Rep. 31st Dec. 1833, vol. 5, p. 335.*

Waslat with interest from the date of a decree, adjudged against the heir of the party, under peculiar circumstances in that decree.

97. In a claim for *waslat* the Provincial court having awarded interest for the whole period [13 years] during which a separate suit for the lands was depending, and interest on that amount from the date of their own judgment, the Sudder dewanny adawlut reversed so much of the decree as regarded that interest, and awarded the principal sum of *waslat*, with interest from the date of the institution of the suit for *waslat* in the Provincial court up to the date of the decree of the Sudder dewanny adawlut, and interest on the aggregate sum from that date till payment should be made.—*S. D. A. Sel. Rep. 29th Aug. 1826, vol. 1, p. 176.*

In a suit which had been depending 13 years, the S. D. A. awarded the principal sum of waslat up to the date of the decree in the Sudder, and interest on the aggregate to the day of payment.

C. O. of 29th Sept. 1820, No. 44, which declared that waanat, unless relinquished, must be included in the amount at which the suit is laid, superseded.

98. The Court declare for general information, that paragraph 6 of the Circular order, No. 29, of the 11th January, 1839, which requires that in actions for real property the mesne profits, unless relinquished, shall be included in the amount at which the suit is laid, supersedes the Circular order, No 44, of the 29th September, 1820, which made the determination of the value of a suit dependant altogether on the sudder jumma.—*Cir. Ord. 25th July 1845.*

## SECTION IX.

### *Simple Mortgages and Pledge.*

When several proprietors of a village jointly received a loan, & bound themselves to repay it at once, one proprietor cannot redeem his own share by a deposit of the amount

The law of limitation does not bar redemption, in an assignment analogous to a mortgage

Lands recovered after 50 years on payment of the sum borrowed on mortgage.

Plaintiff is allowed to redeem a mortgage, and recover his land after 60 years.

Mortgaged property restored to the descendants of the mortgagor after 70 years.

A mortgagee refused to receive the amount deposited by a mortgagor, who thereupon sells the property. The hen takes back the deposit, and this does not affect the purchaser's right

A mere deposit by the borrower of title deeds, as security for a debt, is equivalent to a mortgage

Case of a mortgage declared valid by a former judgment of a Zillah court, subsequently found illegal in a suit to redeem the property

99. In a case of mortgage executed by the several proprietors of a village, without specification of shares, who jointly received the loan, and bound themselves to repay it at one payment, it was held that one of the proprietors could not redeem his own particular share on depositing his alleged portion of the debt.—*S. D. A. Sel. Rep. 25th Nov. 1841, vol. 7, p. 53.*

100. The rule of limitation was ruled not to bar the redemption, in case of an assignment analogous to mortgage.—*S. D. A. Sel. Rep. 20th July 1807, vol. 1, p. 203.*

101. A, having borrowed money from B, pledges certain lands to him, and goes on a pilgrimage. After 50 years, during which A. is not heard of, his heir sues to recover the lands on payment of the sum borrowed; adjudged on the presumption of A's death, and the claim not being barred by the rule of limitation.—*S. D. A. Sel. Rep. 17th March 1812, vol. 2, p. 4.*

102. In a suit for possession of land the property of the plaintiff, to which the defendant pleaded a mortgage from the plaintiff's ancestor, dated 60 years before, and urged lapse of time against the claim, that plea not being of avail in cases of mortgage under Regulation 2, 1805, adjudged that the plaintiff recover on redeeming the mortgage.—*S. D. A. Sel. Rep. 27th Nov 1809, vol. 1, p. 292.*

103. Mortgaged property was restored to the descendants of the mortgagor after a lapse of 70 years from the date of the mortgage, on clear proof being adduced that no *bona fide* transfer had ever taken place.—*S. D. A. Sel. Rep. 16th March 1835, vol. 6, p. 24.*

104. A mortgagee having refused to receive from the Zillah court the amount of a mortgage deposited there by the mortgagor, who subsequently sold the property. Held that the heir of the said mortgagor, having afterwards taken back the deposit did not affect the right of the purchaser.—*S. D. A. Sel. Rep. 23d June 1835, vol. 6, p. 28.*

105. Held, that the mere deposit, by the borrower, of title deeds of real property as security for a debt is equivalent to a mortgage, in giving the holder of the deeds a prior lien on the property specified therein.—*S. D. A. Sel. Rep. 23d May 1837, vol. 6, p. 165.*

106. A mortgage, declared valid by a former judgment of the Zillah court, from which an appeal was preferred, found to be illegal in a subsequent suit for redemption of the mortgaged property; but not set aside on that account by the Sudder dewanny adawlut, the former judgment being still in force and only voidable on review, or appeal; but judgment passed on redemption on liquidation of the debt.—*S. D. A. Sel. P. 12th Sept. 1814, vol. 2, p. 126*

107. A decree having been passed for lands, is afterwards amended, the parties having represented the lands [not in possession of either of them] to be held by other persons in mortgage, whereas the alleged mortgagees when called upon, state themselves to hold as proprietors, paying a fixed *jumma*. The Sudder dewanny adawlut therefore adjudge a share of the *jumma* receivable, and not of the land, leaving the claimant, who objects to the asserted tenure of the possessors, to sue for them, if he think fit.—*S. D. A. Sel. Rep. 7th May 1803, vol. 1, p. 78.*

Case of a decree passed for lands subsequently amended, the parties representing the land as held by others in mortgage, and the mortgagees declaring that they hold it as proprietors.

108. Claim by the respondent to half the value of a diamond, of which his late father was joint proprietor with his uncle, and which the latter had pawned to the appellant. The pledge was not admitted to affect the respondent's right, and judgment given in favor of his claim.—*S. D. A. Sel. Rep. 10th Feb. 1806, vol. 1, p. 126.*

Claim allowed to half the value of a diamond belonging jointly to the plaintiff's father and uncle, and pledged by the latter.

109. In this case the property of the debtor having been given merely as a pledge or security for a debt, the debt itself being repayable on a specified date without further condition respecting the property, the suit was rightly brought for the recovery of the sum lent with interest. Had the transaction been of the nature of a conditional sale, the money action would have been barred by Construction No 898.—*S. D. A. Sel. Rep. 19th Sept. 1836, vol. 6, p. 110.*

Where the property of a debtor had merely been pledged for a debt payable on a certain date, the suit was rightly laid to recover the sum lent without interest.

110. Claim to an estate, under a written engagement for the conditional sale of it, on failure of repayment of a loan of money by a certain day. Construed, from circumstances, that the actual sale of the estate was not intended, but only security for the loan. Judgment for the estate being retained on repayment of the principal and interest of the loan, by an appointed time.\*—*S. D. A. Sel. Rep. 17th June 1806, vol. 1, p. 143.*

When the intention of the parties was not the sale of the land, but the security of a loan, the estate ordered to be retained, on payment of principal and interest of the loan.

111. Appellant's claim to the moiety of an estate, adjudged on proof that it was the joint inheritance of the parties, though a mortgage debt contracted under the management of the respondent's father was paid by the respondent.—*S. D. A. Sel. Rep. 5th Nov. 1811, vol. 1, p. 355.*

Appellant's claim to the moiety of an estate adjudged, under particular circumstances.

112. For a consideration received, A. engages to effect a release of lands mortgaged by him to B. and make over the same to C. or in default of his effecting the release of the lands in question, to make over other lands of an equal value. A. fails in effecting the release; C. claims other equivalent lands; or [in a supplementary plaint] to recover the consideration, principal and interest of the sum advanced; decreed against A. but no lands; the engagement not being sufficiently specific to maintain a suit for land.—*S. D. A. Sel. Rep. 24th Feb. 1813, vol. 2, p. 18.*

Case in which the engagement was not specific enough to maintain a suit for lands.

113. A. having lent 10,000 rupees, on a mortgage of lands to B. and afterwards borrowed 5000 rupees from C. on an agreement that C. should have half the annual profits of the mortgage; and A. having given to C., as security, the custody of the mortgage bond, executed by B., but retained the documents authorizing him to make the collections, held that this is a

In a complicated case, the S D A decided that it was a simple transaction between A & C, the former being accountable to the latter, without reference to the proceeds of a mortgaged estate.

\* The Courts were satisfied, that the original intention of the parties was not the sale of the estate, but the security of the loan. The real purchaser, Rancee Jugdesree, who was allied to the former proprietors, had bought the estate for a low price, and the purchase money was borrowed from the respondent, on the security of the engagement which formed the subject of the suit. But it was evidently not in contemplation to transfer the estate, at the same inadequate price, to the respondent, who was a stranger to the family of the former proprietors. In addition to this consideration, the inadequacy of price weighed with the Court in relieving the appellant from the transfer of the estate under the letter of the engagement.—\* by the S D A on the above case.



simple transaction between A. and C., the former being accountable to the latter, without reference to the proceeds of the mortgaged estate.—*S. D. A. Sel. Rep.* 31st July 1820, vol. 3, p. 43.

A private distribution among themselves by the first and second mortgagees, is of no avail, as the first had a right to the whole, or to none of the estate.

114. The uncles of the plaintiff having mortgaged their shares of an estate to two individuals, and, on these mortgagees absconding, having made a second mortgage to another individual, from whom the plaintiff redeemed the property; held, that a private distribution among themselves by the first and second mortgagees cannot avail, as the first mortgagees had a right either to the whole, or no part of the mortgaged estate.—*S. D. A. Sel. Rep.* 29th Jan. 1824, vol. 3, p. 298.

Court ordered a lease to be set aside, which appeared to be intended only as an additional security for a debt.

115. The Court ordered a lease to be set aside, though it contained no mention of a term, it not being expressly declared to be perpetual, and appearing to have been granted to the same person, on the same day, and for the same lands as a deed of mortgage, and thereby intended only as an additional security for a debt.—*S. D. A. Sel. Rep.* 21st June 1824, vol. 3, p. 372.

Decision of a particular claim to redeem a village from mortgage.

116. Claim to redeem a village from mortgage. Plaintiff allowed to recover one half of the village by paying one half of the purchase money, that being the portion to which he was entitled by the law of inheritance, as heir of the original mortgager, with liberty also to sue to recover, by right of preemption, the other half which had been sold by the person entitled thereto by inheritance to the mortgagee.—*S. D. A. Sel. Rep.* 14th March 1825, vol. 4, p. 32.

Claim to possess certain villages, under an *ikrarnamah* from the conditional purchaser said to have been executed 9 years after the sale, rejected.

117. Right to possession of certain villages under an *ikrarnamah*, or written acknowledgment from the conditional purchaser, alleged to have been executed nine years after the sale had become absolute. Claim rejected; the agreement not being proved, or though proved being either without a consideration, or the condition violated by the plaintiff.—*S. D. A. Sel. Rep.* 25th Sept. 1826, vol. 4, p. 182.

Claim to principal & interest of a mortgage bond adjusted, together with interest accruing during the trial.

118. Claim to principal and interest of a mortgage bond, adjudged, together with interest accruing during the trial of the suit. Entry of part payments in commercial account books of the debtor, produced in evidence by his heir, not admitted as sufficient proof. Construction of Section 6, Regulation 15, 1793.—*S. D. A. Sel. Rep.* 15th July 1808, vol. 1, p. 212.

In a case of simple mortgage, the action for foreclosure must be brought within 12 years from the expiration of the year of grace.

119. In a transaction partaking of the nature of a simple mortgage, in which the mortgagee was not put in possession of the property mortgaged, it was held that the mortgagee must bring his action, for foreclosure of the mortgage, within twelve years from the date of the expiration of the year of grace allowed to the mortgager for redemption.—*S. D. A. Sel. Rep.* 11th Sept. 1841, vol. 7, p. 45.

## SECTION X.

### *Usufructuary Mortgages.*

What interest is to be allowed on mortgage bonds for real property, executed prior, on, or subsequent to the 28th March, 1789.

120. In cases of mortgages of real property, executed prior to the twenty-eighth day of March, one thousand seven hundred and eighty, in which the mortgagee may have had the usufruct of the mortgaged property, whether he shall have held it in his own possession or not, the usufruct is to be allowed to the mortgagee, in lieu of interest agreeably to the former custom of the country, (provided it shall have been so stipulated

between the parties.) until the abovementioned date, subsequent to which, the same interest is to be allowed on such mortgage bonds, and also on all bonds for the mortgage of real property, which have been entered into on or since that date, or that may be hereafter executed, as is allowed on other bonds, which have been or may be granted on, or posterior to, such date, and no more; and all such mortgages are to be considered as virtually and in effect cancelled and redeemed, whenever the principal sum with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, or otherwise liquidated by the mortgager.—*Reg. 15, 1793, Sect. 10.*—*Benares Reg. 17, 1806, Sect. 5.*—*Ced. and Cong. Prov. Reg. 31, 1803, Sect. 9.*

121. For the adjustment of the accounts, in the cases of mortgages specified in Section 10, where the mortgagee shall have had the usufruct of the mortgaged property, the mortgagee is to be required to deliver in the accounts of his gross receipts from the property mortgaged, and also of his expenditures, for the management or preservation of it. The mortgagee is to swear, or (if he be of the description of persons whom the courts are empowered to exempt from taking oaths,) to subscribe a solemn declaration, that the accounts which he may deliver in, are true and authentic. The mortgager is to be permitted to examine the accounts, and after hearing any objections he may have to offer, or any evidence that either party may have to adduce respecting them, the Court is to adjust the account.—*Reg. 15, 1793, Sect. 11.*—*Benares Reg. 17, 1806, Sect. 5.*—*Ced. and Cong. Prov. Reg. 31, 1803, Sect. 10.*

Mortgage to deliver in true accounts of his receipts and expenditures.

122. I beg leave to solicit the opinion of the Sudder dewanny adawlut on the following points. Are cases, which may be brought before the Civil courts, under the provisions of Sections 9 and 10, Regulation 31, 1803, [corresponding with Sections 10 and 11, Regulation 15, 1793,] to be disposed of by a summary enquiry and decision; or, are they to be considered as subject to all the rules prescribed for regular suits?—I am directed by the Court of Sudder dewanny adawlut, in answer to the question therein stated, (respecting cases of mortgage within the provisions of Sections 9 and 10, Regulation 31, 1803,) to acquaint you, that the Court are not aware of any provision in the Regulations for a summary suit in the cases therein referred to.

Cases under sec 10 and 11, as above, for adjusting accounts of the mortgage of real property, must be received and tried as regular suits.

But if the holder of a deed of mortgage and conditional sale object to the surrender of the mortgaged property, which may be in his possession, the court may decide the question summarily.—*Con. 277, 9th July 1817.*

But if the holder of a deed of mortgage object to the surrender of the property, the court may decide it summarily.

123. On reference however to the printed book of Constructions, the Court find that on the 9th July, 1817, the Presidency Court held that "there was no provision in the Regulations for a summary suit, in cases brought before the Civil courts under Sections 9 and 10, Regulation 31, 1803, which relate only to simple mortgage." The Court are disposed to concur in the interpretation of the law, and will cause it to be adopted as a rule of practice in the western provinces.—*Con. 830, West. C 20th Sept., Cal. C. 18th Oct. 1833.*

There is no provision in the regulations to authorize a summary suit in cases under secs 10 and 11, as above, which relate to simple mortgages.

124. A lease granted in consideration of an advance of a sum of money, held to be equivalent to a mortgage, and the lessee declared liable for such surplus proceeds of the estate as remained after he had realized his principal and interest.—*S. D. A. Sel. Rep. 16th July 1827, vol. 4, p. 251.*

A lease granted in consideration of an advance of money, held to be equal to a mortgage, and the lessee liable for the surplus proceeds.

A mortgager may recover an usufructuary mortgage on paying the principal, leaving the interest to be afterwards adjusted.

Case in which the mortgagee was entitled to usufruct as interest, leaving the time for paying the principal to the option of the mortgager.

Had the usufruct exceeded the legal rate of interest, it would have gone to the liquidation of the principal.

When the usufruct was stipulated to be received as interest till the land was redeemed, the claim to recover the lands before that time, was dismissed.

After March, 1780, the excess of the usufruct over the legal interest goes to liquidate the principal.

But the right of redemption in this case was not barred by the law of limitation, the mortgage being redeemable at any time by the payment of the principal.

Decision of a particular case of an usufructuary mortgage by the S. D. A.

Case in which the S. D. A. held that as the profits of a lat, exceeded the legal interest, the mortgagee should account for the excess, & the mortgager recover his estate by paying the balance of principal which appeared

125. A mortgager is entitled to recover possession of an usufructuary mortgage, on payment of the principal sum borrowed ; the question of interest being left open to future adjustment.—*S. D. A. Sel. Rep. 8th July 1820, vol. 3, p. 3.*

126. Claim by appellant to balance of principal and interest alleged to be due on a mortgage dismissed, it appearing that the special condition of the mortgage only entitled the mortgagee to receive usufruct as interest, though lower than the legal rate, leaving the time of redeeming the mortgage, by the payment of the principal lent, at the option of the mortgagers.

Had the usufruct exceeded the legal rate of interest, the excess would have gone to the liquidation of the principal under the operation of Section 10, Regulation 15, 1793.\*—*S. D. A. Sel. Rep. 18th Dec. 1805, vol. 1, p. 121.*

127. Claim by the heir of a mortgager, to recover certain mortgaged lands, dismissed, the mortgage, which provided for the usufruct being received as interest, until the lands should be redeemed, by the payment of the principal lent not appearing to have been cleared.

Had the usufruct exceeded the legal interest, it would have been receivable as interest down to March, 1780, after which the legal interest only would have been allowed to the mortgagee, the surplus being applicable to the discharge of the principal.

Adjudged, however, that the right of redemption could not be barred by lapse of time, under the rules of limitation ; and that the mortgage would be redeemable at any time by liquidation of the principal lent.—*S. D. A. Sel. Rep. 25th May 1807, vol. 1, p. 185.*

128. A. makes an usufructuary mortgage of certain lands to B., and after alleging that the sum borrowed by him had been realized with interest from the profits, takes possession, B. sues A. for dispossession, and, while the suit is pending, sells his title to C. who, by a summary decision of the court, obtains possession of the disputed lands with mesne profits ; held, that a suit may be preferred at one and the same time by A. against C. and the heirs of B. [since dead] for redemption of the mortgage, mesne profits, and exemption from the summary award.—*S. D. A. Sel. Rep. 4th Dec. 1824, vol. 3, p. 420.*

129. A. borrowed 2,001 rupees from B. and granted him a farm of his estate in 1203 Fussely, B. was to pay the revenue and account to A. for two-thirds of the produce, and hold on until the principal was repaid. At the end of 1215, A. sued to recover possession, on the ground that B. had realized more than the principal and interest by profits, and that by Section 6,

\* The decision in this case determines two questions relative to the sort of mortgage described in the report—1st, it is determined (against the claim of the plaintiff) that a mortgagee having, under the terms of the deed, accepted the usufruct in lieu of interest for an indefinite period, has no right to demand, at his own convenience, payment of the debt from the mortgager, but must await his voluntary payment of the principal, or the gradual extinction of the debt under the operation of Section 10, Regulation 15, 1793, in case the annual usufruct exceed the legal interest, 2d, the rule above cited does not annul the stipulations of a mortgage, which may be in favor of the borrower.

Regulation 15, 1793, a creditor is not entitled to interest more than the amount of principal. B. denied that he was liable to account for receipts, and claimed his right to hold the farm, until the plaintiff should pay the principal. The Court held that the section cited was not applicable to this case; but that as the profits of the farm exceeded the legal interest, he should account annually for the excess of income realized, beyond the legal interest; and that A. should recover his estate on repaying 826 rupees, the balance of principal appearing due on an account made up on the above principle.—*Note to S. D. A. Sel. Rep. 1st Feb. 1830, vol. 5, p. 9.*

## SECTION XI.

### *Conditional Mortgages.*

130. It has long been a prevalent practice in the province of Behar to borrow money on the mortgage and conditional sale of landed property, under a stipulation that if the sum borrowed be not repaid (with or without interest) by a fixed period, the sale shall become absolute. This species of transfer has in the above province been usually denominated *bye-bil-wufa*, and the same transaction is common in Bengal under an instrument termed *kut-kubala*. It doubtless exists also, under deeds of the above or similar denominations, in Orissa and Benares; and since the promulgation of the rules respecting interest contained in Regulation 15, 1793, it has become more prevalent; particularly in the province of Behar, wherein instances have occurred in which persons lending money on *bye-bil-wufa*, in order to render the sale absolute, and thereby possess themselves of the landed property of the borrower, have denied the tender, or evaded receiving payment of the money due to them within the period limited for the discharge of it. In such cases the proof of the tender falls on the borrower, and if he fail in the proof of it for want of legal evidence, he is liable to lose his estate. It is necessary therefore for the security of the borrower in such transactions that he should have the means of establishing before a Court of judicature his having tendered, or being ready to pay, within the stipulated period, the amount due from him to the lender; who, if he mean to act fairly will also derive a benefit from a clear rule being laid down whereby it may be readily ascertained whether the borrower was willing to redeem his property by the payment of the money lent upon it, within the period agreed upon between the parties; or whether from his having omitted to perform the conditions of such redemption the sale is become absolute; and the property included therein finally transferred to the lender. For the above purpose, and for the prevention of other abuses in the transactions referred to, the Governor General in Council has passed the following rules, to be considered in force in the provinces of Bengal, Behar, Orissa, and Benares, from the date of the receipt of this Regulation by the several courts respectively.—*Reg. 1, 1798, Sect. 1.*

Description of conditional mortgages called *bye-bil-wufa*, or *kut kubala*

131. Attachment of lands by the Supreme court, pleaded by the purchaser at the sheriff's sale against the validity of a mortgage and conditional sale of part of the lands during the attachment. Plea disallowed, on proof that the sheriff's sale took place in satisfaction of a dif-

Attachment of lands by the supreme court pleaded by the purchaser at a sheriff's sale against the va-

validity of a mortgage and conditional sale; ground on which the plea was disallowed.

ferent demand, and in execution of a different judgment than that under which the original seizure was made: not shewn also that any legal attachment by the Supreme court existed at the time of the mortgage on which a judgment had been obtained in the Zillah court before the sheriff's sale.—*S. D. A. Sel. Rep. 3d Oct. 1806, vol. 1, p. 167.*

A mortgage and conditional sale by an agent set aside on particular grounds, but the mortgage money ordered to be refunded with interest.

132. A mortgage or conditional sale by an agent set aside, it appearing that he had no special powers from the proprietor for that purpose, the consideration being inadequate, and the execution of the deed irregular. But the mortgage money was ordered to be refunded with interest.—*S. D. A. Sel. Rep. 17th March 1812, vol. 2, p. 6.*

Grounds on which a *bye-bil-wafa* sale of land by an agent on the part of the owner was set aside.

133. A *bye-bil-wafa* sale of land, made by an agent on the part of the owner, declared void in Mahomedan law, from the agent having exceeded his powers, from its being a sale at gross inadequacy of price, and from the presumption of collusion between the buyer and agent.—*S. D. A. Sel. Rep. 30th Sept. 1801, vol. 1, p. 55.*

A deed of *bye-bil-wafa* executed on land for a sum of money in favor of a person through whom and not from whom borrowed, not valid in Mahomedan law.

134. Opinion given by the Mahomedan law officers of the Sudder dewanny adawlut, that a deed, termed a deed of *bye-bil-wafa*, executed on land for a sum of money in favor of a person through whom, and not from whom the money was borrowed, is not valid in Mahomedan law.—*S. D. A. Sel. Rep. 7th May 1804, vol. 1, p. 78.*

Grounds upon which the validity of a transaction by *bye-bil-wafa* is not affected.

135. The validity of a transaction of *bye-bil-wafa*, is not affected by the parties not having come to a final adjustment of their respective accounts previously to the execution of the deed by the conditional seller; neither is it affected, [the term at the end of which the conditional sale was to become conclusive being five years,] by the fact of excess above the legal interest having been received by the conditional purchaser in any one year, there being no trace of fraud to evade the law regarding interest.—*S. D. A. Sel. Rep. 31st Jan. 1826, vol. 4, p. 111.*

When the plaintiff's claim was fraudulent, the claim to set aside a mortgage and conditional sale was rejected.

136. Claim to set aside a mortgage and conditional sale rejected: the foundation of the plaintiff's claim being fraudulent, allegation of exaction of usurious interest not enquired into.—*S. D. A. Sel. Rep. 21st July 1813, vol. 2, p. 71.*

Idem

137. Another case of claim to set aside a mortgage and conditional sale, dismissed on account of fraud.—*S. D. A. Sel. Rep. 5th Aug. 1814, vol. 2, p. 118.*

Case in which a transaction was held to be merely a *bye-bil-wafa*, but the condition for the resale, a virtual stipulation for interest beyond the legal rate. The interest, but not the principal forfeited, and the claim to the lands rejected.

138. A person having obtained a bill of sale of lands on the payment of 4,401 rupee executes a written engagement, in which he agrees that he shall not be put in possession of the lands for the period of a year, four months and seventeen days; at the expiration of which the lands shall be re-sold to the seller, on condition of his paying the sum of 5,501 rupees, otherwise the engagement to be considered null and void, and the property to

\* In the cause 'Basunt Ali Khan against Ruckomari,' decided by the Sudder dewanny adawlut on the 16th of January, 1799, there was a question put to the law officers respecting the legality of *bye-bil-wafa* sales, though the cause as it happened, went off on a question, as to the competency of the agent who made the *bye-bil-wafa* sale in that instance on the part of another. It was stated in the *fatwa* then given, that a sale, with optional condition for three days, is good, but for more than three days is not good, according to Humeeda and Yusuf, but according to Mahomed, for four days, or even a longer period, is good, that, the sort of sale being prevalent in the country, Mahomed's opinion should be followed.

The intention of the parties, is collected from the tenor of the deed, shews whether the *bye-bil-wafa* be a sale with the reserve or an option of retraction within a limited time, or a mortgage for the security of money lent. A stipulation for a short period must be considered to mark that a sale was in the contemplation of the parties, a long term denotes a mortgage, or security for a loan, and such mortgages in the form of conditional sales are very common and rightly held to be valid under the opinion here cited.

In the present case, the inadequacy of the consideration was a sufficient ground for allowing the equity of redemption, under the exposition of the Mahomedan law, that inadequacy of price vitiates a sale by an agent (*Sudder Dewanny Adawlut, 3, 32*)—Note by the *S. D. A.* on the above case.

rest absolutely in the purchaser. Such transaction held in reality to be a *bye-bil-wufa*, or mortgage and conditional sale, and the condition for the resale being virtually a stipulation for interest beyond the legal rate, the transaction held to be in violation of Regulation 15, 1793, and the interest liable to forfeiture. But the bill of sale and engagement having been publicly registered, the transaction held not to be an evasion of the above Regulation, involving forfeiture of the principal. The purchaser's claim to the lands rejected, with a judgment in his favor for 4,401 rupees, the amount of his original advance — *S. D. A. Sel. Rep. 29th April 1815, vol. 2, p. 246.*

## SECTION XII.

### *Mode in which the Mortgager may redeem.*

139. In all instances of the loan of money on *bye-bil-wufa*, or on the conditional sale of landed property, as explained in the preamble to this Regulation, however denominated, the borrower, who may be desirous to redeem his land by the payment of the money lent upon it, with any interest due thereon within the stipulated period, is at liberty, on or before the date stipulated, either to tender and pay to the lender the amount due to him; taking such precautions as he may think necessary to establish such tender and payment, if evaded or denied, or, without any tender, to the lender, to deposit the amount due to him on or before the stipulated date, in the *dewanny adawlut* of the city or *zillah* in which the land may be situated, and the Judge receiving the same shall furnish the party with a written receipt for the amount, specifying on what date and for what purpose such deposit may have been made. He shall also, at the same time, cause a written notice, of such deposit to be delivered to the lender and on the application of the latter and his surrender of the conditional bill of sale, or shewing satisfactory cause why it cannot be surrendered, shall pay him the amount deposited, and take his acknowledgment to remain among the records of the court. That there may be no doubt to what amount the deposit in question is to be made, it is required to be as follows. When the lender has not obtained possession of the lands, the deposit is to be the principal sum lent, with the stipulated interest thereon, not exceeding the legal rate of twelve per cent. per annum; or, if interest be payable, and no rate has been stipulated, with interest at the established rate of twelve per cent., but if the lender has held possession of the land, the principal sum borrowed only need be deposited, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements during the period he has been in possession. In either case, a deposit made as above required, shall be considered to preserve to the borrower his full right of redemption, and if the land be in the possession of the lender shall entitle him to demand the immediate recovery thereof, subject to the adjustment of accounts specified in the following section. Provided however, that if the borrower in any case shall deposit a less sum than above required, alleging that the sum so deposited is the total amount due to the lender, for principal and interest, after deducting the proceeds of the lands in his possession, or otherwise, such deposit shall be received, and notice given to the lender as above directed, and if the

Persons who have borrowed money on a conditional sale of land, and who may be desirous of redeeming the land by payment of money lent upon it, how to proceed for this purpose.

May, within the stipulated period, either tender to pay the amount due, to the lender, or deposit the same in the local *dewanny adawlut*.

Receipt to be given by the judge for such deposit.

Notice to be given to the lender, and payment to be made to him, under restriction.

Specification of the deposit required.

Rights of the borrower preserved by making the required deposit.

Proviso with respect to deposits less than above required, if alleged to be the total amount due.

Such deposits to be also received, and to preserve the borrower's rights, if admitted, or established, to be the total amount due.

amount so deposited be admitted by the lender, or be established, on investigation, to be the total amount due to him, the right of redemption shall be considered to have been fully preserved to the borrower, who will not however, in such cases, be entitled to the recovery of his lands until it be admitted, or established that he has paid the full amount due from him.—*Reg. 1, 1798, Sect. 2.*

When the lender has possessed the land, and an adjustment of accounts may be necessary, he is to account for the proceeds of the estate, on the principles prescribed in reg. 15, 1793.

Exception

110. In all instances wherein the lender on a bye-bil-wufa, or similar conditional sale, may have been put in possession of the land, and an adjustment of accounts may consequently become necessary between him and the borrower, the lender is to account to the borrower for the proceeds of the estate whilst in his possession, on the principles prescribed with regard to mortgages and interest in Regulation 15, 1793, as far as the same may be applicable to the nature of the case. But such part of Section 10 of the above Regulation, as directs that the mortgages therein referred to, are to be considered as cancelled and redeemed whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this Regulation, it is hereby declared not to apply thereto.—*Ibid, Sect. 3.*

Tender not to be considered a general tender, in case referred to, unless accepted by the lender.  
Such acceptance how to be proved

111. A tender for the repayment of money lent on the conditional sales referred to in this Regulation, shall not be considered a legal tender, unless accepted as such by the lender, the proof of which acceptance shall be the lender's giving up the bill of sale, or giving a written acknowledgment that he has received back the money lent by him.—*Ibid, Sect. 4.*

Nothing in this regulation to alter the contract between the parties

And all questions of right to be regularly determined by the civil courts.

112. Nothing in this Regulation being intended to alter the terms of contract settled between the parties in the transactions to which it refers, (illegal interest excepted) the several provisions in it are to be construed accordingly; and any question of right between the parties is to be regularly brought before and determined by the Courts of Civil justice.—*Ibid, Sect. 5.*

Provisions in addition to those made by regs. 1, 1798, and 31, 1803, for the redemption of mortgage and conditional sales of land, under deeds herein specified

What shall entitle the mortgager or his legal representative to redemption of his property before the final foreclosure of the mortgage, at any time within period of one year, from and after the period of the application made by the mortgager, to the zillah or city court, for foreclosing the mortgage.

113. In addition to the provisions made in the provinces of Bengal, Behar, Orissa and Benares, by Regulation 1, 1798, and in the Ceded and Conquered Provinces by Regulation 31, 1803, [corresponding with Regulation 15, 1793,] for the redemption of mortgages and conditional sales of land, under deeds of bye-bil-wufa, kut-kubala, or any similar designation, it is hereby provided, that when the mortgagee may have obtained possession of the land, on execution of the mortgage deed, or at any time before a final foreclosure of the mortgage, the payment, or established tender of the sum lent under any such deed of mortgage and conditional sale, or of the balance due, if any part of the principal amount shall have been discharged, or when the mortgagee may not have been put in possession of the mortgaged property, the payment, or established tender of the principal sum lent, with any interest due thereupon, shall entitle the mortgager and owner of such property, or his legal representative, to the redemption of his property, before the mortgage is finally foreclosed in the manner provided for by the following section, that is to say, at any time within one year (Bengal, Fussely, or Willaity, according to the era current, where the mortgage may take place,) from and after the application of the mort

gagee to the Zillah or City court of Dewanny adawlut, for foreclosing the mortgage, and rendering the sale conclusive, in conformity with Section 8 of this Regulation; provided that such payment or tender be clearly proved to have been made to the lender and mortgagee, or his legal representative; or that the amount due be deposited, within the time above specified, in the Dewanny adawlut of the zillah or city in which the mortgaged property may be situated, as allowed, for the security of the borrower and mortgagee, in such cases, by Section 2, Regulation 1, 1798, and Section 12, Regulation 34, 1803; the whole of the provisions contained in which sections, as applied therein to the stipulated period of redemption, are declared to be equally applicable to the extended period of one year, granted for an equitable right of redemption by this Regulation.—*Reg. 17, 1806, Sect. 7.*

144. Proprietors of estates are not entitled to the benefit of Regulation 17, 1806, in cases of *bye-bil-uafa*, in which the period specified for redemption expired prior to the promulgation of that Regulation.—*Con. 672, 20th Jan. 1832*

Proprietors of estates not entitled to the benefit of reg. 17, 1806, in cases of *bye-bil-uafa*, when the period of redemption expired before the promulgation of that regulation

145. The Calcutta Court held on a reference from the Judge of Cuttack that if a mortgager or his representative, desirous of redeeming the mortgaged property in the possession of the mortgagee, deposits the sum due to the mortgagee either with or without interest (as the case may be) in court, under the provisions of Section 2, Regulation 1 of 1798, and Section 7, Regulation 17, 1806, the period of the notice to be served on the mortgagee, requiring him to render up possession of the property, need not be a year, but any reasonable period according to the distance of his residence from the sudder station.—*Con. 974, 7th Aug. 1835.*

When the mortgager has deposited the redemption money, the period of notice served on the mortgagee need not be a year.

146. A case of redemption of mortgage under a deed of mortgage, and conditional sale; the equity of redemption being saved by the payment of the money borrowed within the *period of one year from the receipt* by the mortgager of the notice to pay issued under Regulation 17, 1806, as expressly enjoined by the notice—*S. D. A. Sel. Rep. 12th Jan. 1825, vol. 1, p. 5.*

The equity of redemption saved by the payment of the money borrowed, within one year from the receipt by the mortgager of the notice of reg. 17, 1806.

147. I am directed to acquaint you, that the Court, with reference to the last paragraph of the Circular orders of the 22d July, 1813, consider it to have been determined, that the borrower is entitled to receive possession summarily on depositing the principal sum borrowed, as required by Section 2, Regulation 1, 1798, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements, during the period he has been in possession

The borrower is entitled to receive possession summarily on depositing the principal sum borrowed, leaving the interest to be afterwards adjusted

The case, therefore, put in your letter, of the borrower alleging the principal of the debt to have been realized from the usufruct, which allegation the lender in possession denies, must be the subject of a regular suit, and cannot be decided summarily.

If the borrower alleges that the principal has been realized from the usufruct & the lender denies it, it must be the subject of a civil suit

If however the borrower, persisting in his allegation, deposit the principal sum, merely for the purpose of regaining possession of his lands, he may, of course, subsequently sue the mortgagee for the restitution of the amount deposited, and recover it with costs upon his proving that it really was not due.—*Con. 339, 25th May 1821*

If the borrower, persisting in his allegation, deposits the principal to regain his lands, he may afterwards recover it with costs

148. Right of redemption adjudged to the seller of certain lands on the ground of a condition to that effect in a separate deed, though the bill of sale itself was not worded conditionally.—*S. D. A. Sel. Rep. 10th July 1826, vol. 1, p. 174.*

Case in which the right of redemption was adjudged the seller of certain lands, though the bill of sale was not worded conditionally.



Under reg. 17, 1806, the courts cannot summarily settle what payments will entitle the vendor to redeem. Case in which the S. D. A. allowed time beyond the year of grace to deposit interest and save redemption.

149. Under Regulation 17, 1806, the court cannot summarily settle what payments shall entitle the vendor of a recoverable sale to redeem; and in a case of improper interference, in this regard [where the Lower Court had ruled, that the deposit of the principal was sufficient,] the Sudder dewanny adawlut reversed the order, allowing the vendor [thus misled] a few days to save redemption by deposit of interest, the expiration of the year of grace notwithstanding.—*S. D. A. Sel. Rep.* 19th April 1831, vol. 5, p. 111.

If the revocability of the sale be denied by the vendee, the court cannot interfere in favor of the vendor under reg. 1, 1798.

150. If the revocability of a sale be denied by the vendee, the Zillah court cannot interfere under Regulation 1, 1798, in favour of the vendor. A, depositing the amount of the mortgage, moved the Zillah court to restore possession. B. pleaded that the sale was absolute. The zillah Judge passed a summary order for restoration of the property to A.; but this order was reversed by the Sudder dewanny adawlut, who ordered that the property should be restored to B. on repayment of the mortgage money with 12 per cent. interest, and that he should recover the collections during dispossession. On the institution, however, of a regular suit by C. who had purchased the estate of A., at a public sale for arrears of revenue against A. and B., the revocability of the sale was established, and a decree for possession on redemption of the mortgage passed in favor of C.—*S. D. A. Sel. Rep.* 15th Aug. 1831, vol. 5, p. 139.

#### Particular case.

Case in which the conditional sellers of certain lands were reinstated in possession, on payment of the purchase money, because the provisions of reg. 17, 1806, had not been confirmed to.

151. The conditional sellers of certain lands reinstated in possession, on payment of the purchase money, though the deed containing the condition could not be produced, and the absolute deed of sale only was forthcoming, and though two of the sellers admitted that it had been cancelled; it appearing that the provisions of Regulation 17, 1806, had not been confirmed to.—*S. D. A. Sel. Rep.* 29th July 1823, vol. 3, p. 250.

When no tender of the amount by the mortgager within the specified time, was proved, the claim to the redemption of lands was dismissed.

152. Claim by appellants to the redemption of lands, on which they had executed deed of mortgage and conditional sale redeemable within a certain time, on plea that payment of the amount was tendered within that time. Judgment against the appellants, no such tender being proved.—*S. D. A. Sel. Rep.* 22d May 1805, vol. 1, p. 90.

Where offers of clearing the mortgage within the term were made, & evaded by the mortgagees, judgment given in favor of mortgager.

153. Claim to the possession of an estate, mortgaged with conditional sale, to become absolute at the end of a term, now expired. Judgment for the mortgager, on proof that offers of clearing the mortgage were made within the term, and evaded by the mortgagees.—*S. D. A. Sel. Rep.* 1st Dec. 1806, vol. 1, p. 168.

When several proprietors have executed a mortgage of an entire estate in one transaction, an action by one proprietor will not lie. Course to be pursued by him.

154. Where the mortgage of an entire estate has been executed by several proprietors in one and the same transaction, an action by one proprietor for his own peculiar share will not lie. He may sue to redeem the whole, though the other sharers refrain from joining in the action, and obtaining judgment may take possession of the whole, leaving the other sharers to obtain their shares on preferring the requisite application, and on paying their full proportion of all the expenses.—*S. D. A. Sel. Rep.* 18th June 1822, vol. 3, p. 159.

Decision of the S. D. A. in a particular case of conditional sale.

155. A., on the plea of having conditionally sold certain lands to B., obtains possession of them by a summary order of the Judge by repayment of the money, and grants a lease thereof for five years to C.; B., alleging the sale to have been irrevocable, appeals and regains possession; and the lands having been sold by public auction in satisfaction of a decree and for public revenue, a regular suit is brought by the auction purchasers against A. and B., and the sale is declared revocable and the lands adjudged to them. Held that the lease to C. is of no avail.

to recover profits in an action brought after the revocability of the sale had been judicially established.—*S. D. A. Sel. Rep. 15th Aug. 1831, vol. 5, p. 139.*

156. In a sale of land with a stipulation for its being cancelled in the event of the purchase money being paid in nine years, accompanied at the same time with an undertaking on the part of the sellers that a portion of the property sold [which had previously been mortgaged] shall be redeemed within three months, or on failure thereof that the conditional sale shall immediately become absolute: held, that such contract should not be enforced, it being unjust towards the seller, and contrary to the provisions of Regulation 17, 1806.—*S. D. A. Sel. Rep. 20th Feb. 1821, vol. 3, p. 78.*

Case of contract for the conditional sale of land, which was not allowed, on the ground of its being unjust to the seller, and contrary to reg. 17, 1806

157. The case noted in the margin is a suit which was instituted before the Principal Sudder Ameen for the redemption of a dwelling house mortgaged to the defendant for 498 rupees, and valued by the plaintiffs at 1050 rupees, but which, subsequently to the completion of the pleadings, on proof of the stated value or selling price of the aforesaid dwelling-house being upwards of 5000 rupees, was returned by the Principal Sudder Ameen as beyond his competency to adjudge. I request the opinion of the court as to whether in a suit for redemption of mortgage, the institution fee should be computed upon the amount advanced by the mortgager, or the full value of the property mortgaged, there being in the present instance, a difference of 4,500 rupees between the two, and this description of suit not coming exactly under any of the heads of directions for the valuation of claims, specified in Schedule B, Clause 3, Regulation 10 of 1829.—In reply, I am directed to inform you that in suits brought by a mortgager to regain possession of property mortgaged, the amount of stamp should be calculated on the value of the property, due regard being had to the rules laid down in the Regulation for estimating that value, and not on the sum for which the property was mortgaged. This appears distinctly to be the intent of Article 8, Schedule B, Regulation 10, 1829, under which the stamp is regulated by the value of the thing claimed.—*Con. 957, West. C. 17th June, Cal. C. 7th Aug. 1835.*

In a suit by a mortgager to regain possession of the property mortgaged, the amount of the stamp must be calculated on the value of the property, and not on the sum for which it was mortgaged.

158. In an account of several years between the borrower, and lender under a *bye-bil-waf*, the court did not allow the yearly rent to be charged first to the yearly interest, but limited the lender's credit for interest to a sum equal to the principal, and the double principal being less than the rent receipts, the borrower recovered possession of his land.—*S. D. A. Sel. Rep. 10th Jan. 1833, vol. 5, p. 259.*

Mode in which an account of several years between the borrower and lender under a *bye-bil-waf* was adjusted by order of the court

### SECTION XIII.

#### *Mode in which the Mortgagee may foreclose.*

159. Whenever the receiver or holder of a deed of mortgage, and conditional sale, such as is described in the preamble, and preceding sections of this Regulation, may be desirous of foreclosing the mortgage, and rendering the sale conclusive, on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall (after demanding payment from the borrower, or his representative,) apply, for that purpose, by a written petition to be presented by himself, or by one of the authorized

How a mortgagee or holder of a deed of conditional sale is to proceed, when desirous of foreclosing a mortgage, or rendering a conditional sale conclusive.

To present a peti-

tion in person or by an authorized vakeel to the judge of the zillah court

How the judge is to proceed on receiving such petition.

The court's explanation of the sole intention of reg. 17, 1806, sec. 8

The duties of the judge are purely ministerial, detail of them

Misapprehension of its meaning by the provincial court, that the seller was bound within the year to pay the demand, and, in default, the purchaser was to obtain summary possession

This construction is not warranted; the judge has no power to dispossess the seller and give the lands to the purchaser

The sections provide no summary remedy. In that case a person might be compelled to pay a large sum, or be ousted of his estate on the demand of another, though he denied the validity of the engagement

But, if the seller fail to make the payment, he does it at his peril. If the sale turns out to be valid, he must, on a suit being brought, lose his lands

The summary enquiry by the judge in this case, superfluous

The judge should have called upon the seller for payment,

vakeels of the court, to the Judge of the zillah or city in which the mortgaged land, or other property, may be situated. The Judge on receiving such written application, shall cause the mortgager, or his legal representative, to be furnished, as soon as possible, with a copy of it, and shall at the same time, notify to him, by a perwannah under his seal and official signature, that if he shall not redeem the property mortgaged, in the manner provided for by the foregoing section, within one year from the date of the notification, the mortgage will be finally foreclosed, and the conditional sale will become conclusive — *Reg. 17, 1806, Sect. 8.*

160. The Court remark that the sole intention of Section 8, Regulation 17, 1806, is to prevent the conditional sales called *bye-bil-wuta* or *kut-kubala*, from becoming absolute, until the seller shall have received from the Dewanny *adawlat* a notice, that the purchaser has demanded payment of the amount due to him upon the contract (inclusive or exclusive of interest, according to circumstances,) and that if the seller shall fail to satisfy the demand in the manner prescribed in the preceding section of the same Regulation, within the year from the date of the notice, the sale will become absolute

The duty of the zillah and city Judges under this section is (as far as the purchaser is concerned) purely ministerial, leaving them nothing to do but to cause the prescribed perwannah to be served on the seller, and to receive and pay over to the purchaser, if desirous of receiving the same, whatever amount may be paid in by the seller, to receive due proof of the service, or if the purchaser should refuse to accept the same, to restore it to the seller.

The Provincial court appear to have viewed the sections quoted above, as implying that the seller on receiving the notice prescribed, is bound within the period of a year to pay the amount demanded, and as providing, that if the seller fail to make such payment, the purchaser is immediately to be summarily put in possession of the lands conditionally sold.

The Court are of opinion, that nothing contained in the sections above quoted warrants such construction; and that the said sections do not in particular vest the Judge with authority to dispossess the seller, and give up the lands to the purchaser.

That the said sections, as justly noticed by the Provincial court, provide no summary enquiry in the cases to which they relate: that upon the construction adopted by that court, it would therefore follow that a person might be compelled to pay a large sum of money, or be ousted of his estate, for several years, upon the mere demand of another, without the least enquiry or proof, though he should deny the authenticity or validity of the alleged engagement.

That if, however, the seller fail to make the payment demanded, he must do so at his peril. Since, should it prove that the alleged sale was authentic and valid, and that any part of the amount demanded was due, the sale will have become absolute, and he must, on a suit being brought against him, lose his lands.

According to the construction stated above of the sections in question, it follows that the summary enquiry made by the Judge in the present case was superfluous.

The Court further entirely acquiesce in the observation of the Provincial court that the purchaser not having obtained possession, the Judge of zillah Nuddea should have called upon

the seller for payment, both of principal and interest, according to the demand of the purchaser. —The Court are of opinion that the Provincial court was clearly competent to rectify this error of the Judge, by directing him to issue a further notice to the seller, calling upon him, within a reasonable period, to be inserted in the notice, to pay in interest as well as principal.

both of principal and interest, according to the purchaser's demand.

Though not immediately connected with the question before them, the Court, to guard against the preceding instructions being misinterpreted, deem it necessary to add, that they do not apply to the case of a borrower on a *bye-bil-wufa*, who had delivered over possession to the lender, paying up the principal sum advanced before the sale has become absolute. The Court are of opinion that the borrower in such case, would, by Section 2, Regulation 1, 1798, be entitled to receive possession summarily without suit.—*Cu. Ord* 22d July 1813.

The above instructions do not apply to the case of a borrower under *bye-bil-wufa*, who had delivered over possession to the lender, and paid the principal before the sale became absolute.

161. The Court having reason to believe that a practice very generally prevails in these provinces of the zillah and city Judges declining, in the summary proceeding held by them under the provisions of Regulation 17, 1806, in cases of mortgage and conditional sale, commonly called *bye-bil-wufa*, that the sale has become absolute, solely on the application of the conditional purchaser at the expiration of the period allowed by law for the redemption of the mortgage; and that they are moreover in the habit of giving judicial opinions, not only upon the fact of the foreclosure of the mortgage or conditional sale, but also upon other points which frequently arise in the course of the summary process, the decision of which entirely belongs to a regular suit; and deeming such practice liable to serious objections, particularly as, on the institution of a regular suit for possession of the mortgaged property, the Native judicial officers, by whom such cases are frequently cognizable, are apt to consider, that the sale having already been declared absolute by the Judge, they are not competent to question and pass their own judgment upon that point, and therefore give possession merely on the ground of the summary proceeding held by the Judge, I am, therefore, directed to request, that in future proceedings of this nature, you will directly confine yourself to recording simply the facts which have occurred during the progress of the summary process, such as the application of the conditional purchaser, the issue and service of the prescribed notice, any petitions which may have been presented by either party, and generally the other particulars adverted to in the second paragraph of the circular instructions of the 22d July, 1813.—*Cu. Ord. Cal. and West C.* 17th Jan. 1834.

Objectionable practice of the judges under the provisions of reg. 17, 1806.

In those cases the judge will simply record the facts which have occurred during the summary process; the application of the purchaser, the issue of notice, the petitions given in by either party, and generally all particulars.

162. In a suit brought by a mortgagee, for the foreclosure of a mortgage, it is competent to the court in which the suit was preferred to enquire whether the transaction was an illegal one *ab initio*, and to decide accordingly.

When a mortgagee brings a suit for foreclosure, the court may enquire if the transaction was illegal *ab initio*.

If it was proved that the notice was not duly issued to the mortgager, the plaintiff ought to be nonsuited, leaving him to apply for the issue of the prescribed notice.—*Con.* 1110, *West C. 2d, Cal. C.* 23d March 1834.

If the notice of a year was not issued, the case should be nonsuited.

163. It is not required by the Regulations that a copy of the deed of mortgage should be served on the mortgager, but only a copy of the application of the mortgagee to the Judge of the Civil court for the issue of the prescribed notice.—*Con.* 630, 11th March 1831.

A copy of the deed of mortgage need not be served, but only of the application of the mortgagee for the prescribed notice.

164. The production of the original deed of mortgage, prior to the issue of notice of foreclosure, under Section 8, Regulation 17, 1806, is not necessary.—*Rep. Sum Cases*, 5th Sept. 1840, p. 47.

The production of the original deed of mortgage, before the issue of notice, unnecessary.

In an action to render the sale absolute, proof that notice has been served under the above section, is necessary.

By the release of the vendors to vendees of a conditional sale, procedure according to sec 8, reg 17, 1806, is not dispensable, under peculiar circumstances.

The mortgagee is not entitled to foreclosure without recourse to the rules of reg 17, 1806.

If after notice to the vendor, the vendee, within the year of grace, extends the right of redemption beyond that time, the notice need not be renewed.

An action cannot be against the mortgager disputing the mortgagee's claim, without the application to foreclose, directed in sec 8, as above.

The mortgagee, on filing his application, should deposit the tulubannah of the poot through whom the perwannah is to be issued.

From what date the period of one year is to be calculated.

The notice, prescribed in sec 8, reg 17, 1806, should bear the date on which it may be actually issued, and not that on which it was ordered.

165. In an action to recover on a revocable sale as rendered absolute, the Sudder dewanny adawlut required proof that notice under Section 8, Regulation 17, 1806, had been served on the vendor.—*S. D. A. Sel. Rep. 28th Feb. 1834, vol. 5, p. 346.*

166. If a claim be dismissed, by way of nonsuit, the court should not narrow the future legal recourse of the plaintiff. The Sudder dewanny adawlut implies, that by the release of the vendors, to vendees, of a conditional sale, procedure according to Section 8, Regulation 17, 1806, is not dispensable, under peculiar circumstances—such as, intervening attachment, in execution, and sale by vendor to a third party, to satisfy judgments.—*S. D. A. Sel. Rep. 15th June 1830, vol. 5, p. 39.*

167. Judgment having been given against a mortgager, who sued to redeem the mortgaged property, on the plea that he had tendered repayment of the money borrowed. Held, that the mortgagee is not thereby entitled to foreclosure, without recourse to the rules prescribed by Regulation 17, 1806.—*S. D. A. Sel. Rep. 25th March 1823, vol. 3, p. 225.*

168. In a conditional sale, after issue of notice to the vendor, under Section 8, Regulation 17, 1806, the vendee within the year of grace, extended the right of redemption beyond that term. Held, that such extension alone does not render a renewal of notice necessary under that law.—*S. D. A. Sel. Rep. 14th June 1830, vol. 5, p. 37.*

169. An action on the part of the mortgagee for possession, at the expiration of the period of the deed of mortgage, cannot be in the first instance against the mortgager disputing his claim under the deed, without application being made to foreclose, as directed by Section 8 of the Regulation quoted.—*Con. 105, 25th June 1812.*

170. The Court deem it sufficient to observe that the provisions of Section 8, Regulation 17, 1806, expressly require that a copy of the application of the mortgagee to foreclose should accompany the perwannah issued to the mortgager; and that in their opinion, the mortgagee, on filing his application should be directed immediately to deposit the tulubannah of the poot through whom the perwannah is issued to the other party, that the order for issuing the same be passed without delay.—*Con. 644, 21th June 1831.*

171. The period of one year, allowed for the redemption of mortgages or conditional sales by Section 8, Regulation 18, 1806, must be calculated from the date of the written notification, as expressly mentioned in that section, as well as in the Persian translation thereof.—*Con. 263, 23d Jan. 1817.*

172. It having since come to the knowledge of the Court that the written notification to the mortgager, or his representative directed in that section, instead of being immediately issued as evidently intended by the express terms of the Regulation, is sometimes delayed for a month, and upwards, whereby the mortgagee's application for a foreclosure is not made known to the mortgager so early as it ought to be, whilst at the same time the year allowed for redemption must necessarily be calculated, as prescribed, from the date of the notification, the Court are of opinion, that whenever a perwannah to a mortgager, or his legal representative containing the notification prescribed in Section 8, Regulation 17, 1806, may not be issued on the date of its being ordered, it should bear the date on which it may be actually issued, instead of that on which the perwannah may be ordered; and that the term of one year allowed for

redeeming the mortgage should be calculated from the date so inserted.—*Cir. Ord. 9th April 1817, par. 2.*

173. You are accordingly desired to observe this rule in issuing any future notifications of the nature referred to; at the same time giving particular attention to prevent any unnecessary delay in issuing such notifications which in justice to mortgagees, as well as in conformity with the intention of Sections 7 and 8, Regulation 17, 1806, should be issued as soon as possible after the receipt of the mortgagee's application for a foreclosure.—*Ibid, par. 3.*

The judge will be particularly careful that there is no unnecessary delay in issuing the notifications.

174. The time of notice of foreclosure of a mortgage prescribed by Section 8, Regulation 17, 1806, having expired on a Sunday, the Sudder dewanny adawlut held that a tender of a debt on the day following, as a deposit in court, should have been allowed.—*Rep. Sum. Cases, 15th July 1811, p. 15.*

If the time of notice of foreclosure expires on Sunday, the tender of the money on the following day should be allowed.

175. The period one year allowed for the redemption of mortgages on conditional sales by Section 8, Regulation 17, 1806, must be calculated from the date of the issue of the written notification, which should also be the date of the notification itself. Held by the Sudder dewanny adawlut, that a notice bearing the date of the order for issue instead of the date of actual issue, was incorrectly and irregularly dated; and that the period included between those two dates could not be calculated as coming within the year allowed to the mortgagee to redeem the mortgage.—*S. D. A. Sel. Rep. 19th June 1837, vol. 6, p. 166.*

A notice bearing the date of the order of issue and not the date of actual issue, was incorrectly and irregularly issued, & the period between these dates is not to be counted as part of the year.

176. The provisions of Section 8, Regulation 17, 1806, do not entitle a mortgagee to be put in possession, by judicial process, of the property mortgaged to him, although stated to be unredeemed at the expiration of the period notified, if the mortgager contest the right of the mortgagee to obtain possession, and a Judge is not authorized in such case to put the mortgagee in possession on a summary investigation, or otherwise than by a regular suit.—*Con. 80, 14th March 1811.*

See 8, reg. 17, 1806 does not entitle the mortgagee to be put in possession, by judicial process, if the mortgager contests the right of the mortgagee to obtain possession. It can be effected only by a regular suit.

177. The Judge was further informed, that if the mortgager, on being called upon to show cause why the mortgagee should not obtain possession, denied the right of the mortgagee to possess the lands, the question of right could only be determined as directed by Section 5, Regulation 1, 1798.—*Ibid.*

If the mortgager denies the right of the mortgagee to possess the lands, the question must be determined according to sec. 5, reg. 1, 1798.

178. A Judge, in carrying on the process required on the application of a mortgagee to foreclose, acting purely in a ministerial capacity, is not competent to entertain or enquire into a plea of forgery set up by the mortgager. He may however enquire into any alleged misconduct on the part of his officers.—*Con. 1179, West. C. 12th Oct., Cal. C. 2d Nov. 1838.*

In the case of the application of a mortgagee to foreclose, the judge acts ministerially and cannot enquire into a plea of forgery set up.

179. It is not competent to a zillah Judge to pass an order summarily, for foreclosure of a mortgage, notwithstanding the vendor and vendee might certify to him an agreement, to the effect that the conditional sale should be made absolute without the necessity of further proceedings in the event of a violation of the agreement by the vendor.—*Rep. Sum. Cases, 28th June 1841, p. 12.*

The judge cannot pass an order summarily for the foreclosure of a mortgage though vendor and vendee certify an agreement to render the sale at once absolute.

180. The tender to the mortgagee of the money borrowed by a person to whom the mortgaged property has been transferred by the mortgager, is sufficient to prevent a foreclosure.—*S. D. A. Sel. Rep. 28th April 1841, vol. 7, p. 30.*

The tender of the money by one to whom the mortgager has transferred the property is sufficient to prevent a foreclosure.

But the tender of the money by a stranger to the transaction is not sufficient to prevent it.

181. In a case of mortgage with conditional sale, the tender of the mortgage money borrowed by a stranger to the transaction, is not sufficient to prevent a foreclosure.—*S. D. A. Sel. Rep. 28th Nov. 1820, vol. 3, p. 54.*

Where a Mussulman, to avoid the imputation of taking interest, lent 1800 rs on a deed of mortgage, & consolidated the interest for five years in the bond, he was not entitled to the village when the period of redemption arrived, but only to the principal and interest.

182. A. [a *Mussulman*,] sues B. for possession of a village under a deed of mortgage and conditional sale for 2081 rupees, redeemable in five years. It appearing that A. lent to B only 1300 rupees, and to avoid the imputation of taking interest, consolidated the interest for that sum for five years with the principal, and caused the aggregate sum to be entered in the bond, as principal. adjudged that he is not entitled to the village, at the expiration of the period of redemption. The Court, however, order that he should recover the principal sum actually lent, with interest thereon, as there was no attempt to obtain interest beyond the legal rate.—*S. D. A. Sel. Rep. 16th March 1818, vol. 2, p. 255.*

When under a deed of *bye-bil-wafa*, the mortgage was foreclosed and the sale made absolute, a suit to obtain the land was thrown out, because a higher sum than legal interest had been taken

183. In a suit to obtain possession of certain premises under a deed of *bye-bil-wafa*, the mortgage having been foreclosed, and the sale made absolute, it appearing that one rupee *per mensem* was the sum stipulated to be paid as interest in the deed of mortgage, but that the mortgagee had received a separate bond engaging the payment of one additional per cent. interest, such proceeding was held to be contrary to the provisions of Regulation 17, 1806, and the claim was accordingly disallowed.—*S. D. A. Sel. Rep. 24th Jan. 1826, vol. 4, p. 106.*

When there had been illegal interest by deduction from the principal the action for the land was dismissed

184. In a case of *bye-bil-wafa*, the lender having exacted illegal interest by deduction from the principal, the Sudder dewauny adawlut, with reference to Section 9, Regulation 17, 1806, dismissed the action for the land conditionally sold.—*S. D. A. Sel. Rep. 17th Jan. 1831, vol. 5, p. 81.*

In a case of *bye-bil-wafa*, the lender, unless good cause can be shewn, can only sue for possession of the property pledged, not for the money to be repaid.

185. I am directed by the Court to communicate to you, in reply to the question contained in the 5th paragraph of yours of the 23d June last, their opinion and that of the Western Court of Sudder dewauny adawlut, that if the mortgage in question be of the nature of a conditional sale, and the money be not repaid, the lender, unless good and sufficient cause be shewn, can only sue for possession of the property pledged, and has not the election of suing to recover the money or to be put in possession of the property, as he may deem most advantageous to his own interest.—*Con. 898, 5th Sept. 1831.*

*Idem.*

186. In a case of conditional sale, if the debt be not repaid, the lender, unless good and sufficient cause be shewn, has not the choice of suing for the money or for the property pledged, but is restricted to an action for the latter.—*S. D. A. Sel. Rep. 12th April 1842, vol. 7, p. 92.*

*Idem.*

187. Property on which the plaintiff had a mortgage having been sold in execution of a decree obtained by a common bond creditor, the Court held that, notwithstanding the sale, the plaintiff should sue to foreclose the mortgage, instead of for the money lent by him, the sale having made no alteration in his position as mortgagee.—*S. D. A. Sel. Rep. 21st July 1841, vol. 7, p. 42.*

When the mortgager failed to fulfil the condition agreed on, the court decreed principal & interest.

188. Action by a mortgagee, to recover principal and interest, decreed in his favor, on proof of failure, on the part of the mortgager, to fulfil the condition mutually agreed upon, of transferring the mortgaged property to the occupancy of the mortgagee.—*S. D. A. Sel. Rep. 27th Sept. 1841, vol. 7, p. 17.*

When the lower courts did not enquire into the state

189. In an action to recover on a conditional sale, the plaintiff recovered in the lower courts on ground that the sale had become absolute by default of vendor to repay all, within the

legal time, but vendee had received rent from the sold property and had continued to receive partial payments after default, and vendor had deposited in court a sum as balance due to the vendee. A special appeal was admitted because the lower courts had not enquired into the state of account nor as to disputed service of notice under Section 8, Regulation 17, 1806, on vendor.—*S. D. A. Sel. Rep. 29th Feb. 1831, vol. 5, p. 346.*

190. If a mortgager in default engage at the end of a term, to convert the mortgage into a sale, in the event of non-redemption within the term—and if he neither satisfy the loan nor surrender the property, the mortgagee may recover the loan, and interest, (if not forfeited as in this case) and is not restricted to his real action.—*Note to the S. D. A. Sel. Rep. 2d Feb. 1830, vol. 5, p. 10.*

191. Judgment creditors intervened in an action for foreclosure of a mortgage, in which their debtor was defendant, their interest was held to entitle them to appeal from a judgment which tended to bar their right of execution against the real property of their debtor.—*S. D. A. Sel. Rep. 20th May 1841, vol. 7, p. 32.*

192. The spirit and intention of Regulation 17, 1806, appear applicable to every description of real property as well as to landed estates.—*Con. 370, 21st Sept. 1821.*

193. A decree of foreclosure of a mortgage does not bar enquiry into the claim of a claimant, not a party to the suit, for recovery of the same property.—*S. D. A. Sel. Rep. 9th March 1842, vol. 7, p. 76.*

194. A conditional sale and decree for foreclosure and possession, is no bar to the sale of property pledged as security to a Civil court to stay execution of a decree under a bond of prior date.—*Rep. Sam. Cases, 25th April 1843, p. 48.*

195. The Sudder dewanny adawlat will uphold a decree of the Supreme Court, in favor of a mortgage founded on a bond to confess judgment, although the foreclosure of the mortgage be contrary to Regulation 17, 1806, the mortgager having voluntarily subjected himself to the jurisdiction.—*S. D. A. Sel. Rep. 9th Sept. 1821, vol. 3, p. 111.*

196. A decree of a court of competent jurisdiction, in an action for foreclosure of a mortgage, against the alleged heir, in possession of the property of the deceased mortgager, is no bar to the recovery of the property awarded by the decree on suit instituted by the rightful heir.—*S. D. A. Sel. Rep. 15th Feb. 1841, vol. 7, p. 40.*

197. Held that a Magistrate exceeded his competency in awarding possession to the purchaser of mortgaged property to the exclusion of the mortgager, on the plea that the mortgage had been redeemed, although the purchaser, up to the time of the dispute, had never been in possession.—*Con. 393, 17th June 1825.*

198. A. sold to B. by revocable sale several villages for a defined sum and at the same time transferred absolutely to B. other property apparently but not really for money paid. On application of B. the Zillah court ordered notice to redeem to be issued to A. under Section 8, Regulation 17 of 1806. A. paid off part of the price inserted in the deed of revocable sale, and by mutual agreement part of the conditionally sold property was discharged and part remained under sale, revocable within a defined period on satisfaction of the share of the price imputed to it. A. did not duly redeem but made partial payment received by B. after expiration of defined

of the account, nor as to the disputed service of notice, a special appeal was admitted.

Case in which the mortgagee may recover the loan and interest if not forfeited, and is not restricted to his real action.

Intervention of judgment creditors in an action for foreclosure of a mortgage in which their debtor was defendant.

The spirit of reg. 17, 1806 applicable to every description of real property

A decree of foreclosure does not bar enquiry into the claim of one who is not a party to suit

A conditional sale and decree for foreclosure and possession does not bar the sale of property pledged as security to a civil court on a prior date

Case in which the S. D. A. upheld a decree of the supreme court for foreclosing a mortgage, though contrary to reg. 17, 1806

A decree of a competent court, for foreclosure of a mortgage against the alleged heir, does not bar an action for the recovery of it by the rightful heir

A magistrate exceeded his powers in awarding possession to the purchaser of mortgaged property to the exclusion of the mortgager.

Decision of the S. D. A. of a particular case of conditional



period. B. in his real action to recover, as under a sale rendered absolute, failed on a special appeal to the Sudder dewanny adawlut who did not order a refund of balance of purchase money ; because, 1, the Court considered the gratuitous conveyance as an usurious device under Section 9, Regulation 15 of 1793 ; 2, Proof that notice was duly served on vendor under Section 8, Regulation 17 of 1806, was wanting; 3, The original revocable sale was annulled by the subsequent covenant.—*S. D. A. Sel. Rep. 28th Feb. 1834, vol. 5, p. 346.*

Decision of the S  
D. A. of a particular  
case of conditional  
sale.

199. In an action for possession of an estate mortgaged under a deed of *bye-bil-uwfa* or conditional sale, the period of its redemption having expired, a decree was obtained in the Zillah court. Two years after, (the estate having in the mean time been sold by public auction) an appeal being preferred to the Provincial court, the zillah decree, from its not being in conformity to the rules of Regulation 17, 1806, was reversed. The Sudder dewanny adawlut held the sale to have become absolute, considering the omission of the mortgager to prefer an appeal in due time and to stay the intermediate sale of the estate, as a sufficient bar to his right of redemption.—*S. D. A. Sel. Rep. 19th Nov. 1816, vol. 2, p. 200.*

Idem.

200. A. enters into a written engagement to B. for the sale of his estate on condition of receiving the whole amount of the purchase money by a specified period, and in that case engages to execute a regular bill of sale. A. receives part of the purchase money, and B. tenders the remainder before the expiration of the specified period. A. however, refuses to abide by the terms of his engagement. At the suit of B. the conditional sale was held to be conclusive against A. although the engagement did not contain any express condition that it should be considered sufficient to constitute an actual sale.—*S. D. A. Sel. Rep. 13th Aug. 1814, vol. 2 p. 123.*

Idem.

201. The vendee of a revocable sale, takes out of court amount of principal and interest tendered—save his right of action, for the sum charged as short tendered : and the court will award the same, if the vendor fail to discharge himself,—but without prejudice to his right to recover, of the vendee, the amount alleged to have been received by him.—*S. D. A. Sel. Rep. 19th April 1831, vol. 5, p. 111.*

Idem

202. In consideration of, and to secure, a sum, paid by A. B. deposited his titles to some real property, and executed a sale, revocable on repayment of principal and interest, within a limited time, covenanting to give possession, and effect a registry of the vendee's name. After nearly twelve years had elapsed, A. sued B. to recover principal and interest, and the award in his favor was affirmed by the Sudder dewanny adawlut, the defence being a total denial of the payment and deposit.—*S. D. A. Sel. Rep. 19th May 1831, vol. 5, p. 117.*

Idem

203. A. sold to B. certain villages which he had previously sold under *bye-bil-uwfa* to C. On the suit of B. against A. and C. the lower courts decreed specific performance of the contract in favor of B., C. receiving the money due on his conditional sale. The *futwa* of the law officers of the Sudder dewanny adawlut asserted that, under the Mahomedan law, the vendee (B.) of the pawner (A.) could not recover an unredeemed pledge from the non-assenting pawnee (C.), but might elect to wait redemption by the pawner, or sue him to set aside the sale. With reference to this opinion and on general principles, the Sudder dewanny adawlut dismissed B.'s claim to compel performance.—*S. D. A. Sel. Rep. 14th Aug. 1832, vol. 5, p. 226.*

Idem

204. A sale, with a separate condition for the relinquishment of the property by the purchaser on the seller producing another purchaser at a higher price, within a specified time.

held to be of the nature of a conditional sale, and subject to the rules of Section 8, Regulation 17, 1806.—*Rep. Sum. Cases*, 26th Dec. 1843, p. 54.

## SECTION XIV.

### *Minors—Minority.*

205. The rule contained in Section 27, Regulation 10, 1793, which limits the minority of Hindoo and Mahomedan proprietors of estates paying revenue to Government, to the expiration of the fifteenth year, is hereby rescinded, and the minority of such proprietors is declared to extend to the end of the eighteenth year.—*Reg. 26, 1793, Sect. 2.*

Period of minority extended to the end of the eighteenth year.

206. The rule contained in the preceding section, is to be considered to extend to proprietors of joint undivided estates, for the management of which a surburakar or manager is required to be appointed by the proprietors by Section 23, Regulation 8, 1793.—*Ibid, Sect. 3.*

Rule declared to extend to male proprietors of joint undivided estates.

207. The age of 21 was held as the period of the petitioner (a Christian) attaining his majority with reference to the provisions of a will, under which he claimed the personal management of property bequeathed him.—*Rep. Sum. Cases*, 14th April 1842, p. 27.

A Christian attains his majority at 21.

208. A question having arisen as to whether a minor Hindoo widow should reside in the house of her husband's family, or in that of her own father, the Sudder dewanny adawlut ruled, under the circumstances, that she should remain under the protection of her father.—*Mr. Bradshaw's Opinion*—Regulation 26 of 1793 fixes the age of majority for Hindoos at 18, nor is there anything to limit its provisions only to males.—*Rep. Sum. Cases*, 28th Jan. 1837, p. 13.

A Hindoo female attains her majority at 18.

## SECTION XV.

### *Appointment and Duties of Guardians.*

209. In all cases of joint undivided estates when one or more of the proprietors shall die leaving heirs who are under age, lunatics, or idiots, and without nominating by will a guardian or guardians to the heirs, it shall be the duty of the Judge within whose jurisdiction such estate may be situated (or the principal part of it, in the event of its being situated in two or more jurisdictions) on the receipt of a report from the Collector, or from any other person or persons interested in the welfare of the family of the deceased, stating the grounds on which he or they may consider the next of kin as unfit to be entrusted with the care of the person, or management of the estate of the heir, to investigate the nature of the objections to the nearest of kin, and if satisfied himself that they are well founded the Judge shall nominate some other person of character and respectability to act as guardian of the heir, reporting the circumstance in every instance to the Court of Sudder dewanny adawlut.—*Reg. 1, 1800, Sect. 1.*—*Benares Reg. 6, 1822, Sect. 2.*—*Ced. and Cong. Prov. Reg. 8, 1805, Sect. 29, Cl. 8.*

Zillah judges authorized under certain circumstances, to nominate guardians to disqualified landholders not subject to the authority of the court of wards.

Rules for the selection of guardians.

210. In the selection of guardians to be appointed under this Regulation, the Judge is to attend particularly to their capacity, character and responsibility, but the guardianship is in no instance to be entrusted to the legal heir of the ward or other person interested in outliving him.—*Reg. 1, 1800, Sect. 2.—Benares Reg. 6, 1822, Sect. 2.—Ced. and Cong. Prov. Reg. 8, 1805, Sect. 29, Cl. 9.*

Compensation to the guardian for his trouble, when necessary, to be fixed by the judge.

211. It is expected that some friends of the family of the deceased will gratuitously discharge the trust of guardian, but if on any occasion it may become necessary to make a pecuniary compensation to the person appointed to act as guardian, the amount of such compensation is to be fixed by the Judge on a due consideration of the circumstances of the case.—*Reg. 1, 1800, Sect. 3.—Benares Reg. 6, 1822, Sect. 2.—Ced. and Cong. Prov. Reg. 8, 1805, Sect. 29, Cl. 10.*

Guardians to be furnished with a commission and to give security.

212. The guardians appointed under this Regulation, are to be furnished with a commission under the official seal and signature of the Judge, but previously to the delivery of it, they are to give security for their appearance during the continuance of their trust, and to execute the following obligation:—"I, A. B., having voluntarily taken upon myself the guardianship of C., proprietor of a ———— anna share of the estate of D., do hereby solemnly promise and engage to execute the trust committed to me zealously and faithfully to the best of my judgment, and according to the Regulations which have been or may be prescribed for the guidance of guardians by the Governor-General in Council, I will derive no advantage myself, directly or indirectly, from any monies belonging to my ward, which may come into my hands in the execution of my trust, beyond the compensation granted me for my superintendence, nor will I knowingly suffer any other person to derive therefrom any such undue advantage. I also promise and engage to render a true and just account of whatsoever may be received by me on account of my ward abovementioned, when required to do so by any competent authority, and in the event of its being proved that I have been guilty of any embezzlement, or of any breach of trust injurious to his (or her) property, I hereby bind myself, my heirs and successors to make good treble the amount of the embezzlement or injury so proved against me."—*Reg. 1, 1800, Sect. 4.—Benares Reg. 6, 1822, Sect. 2.—Ced. and Cong. Prov. Reg. 8, 1805, Sect. 29, Cl. 11.*

Duties to be performed by the guardians.  
To vote in the election of managers.

213. Guardians appointed under this Regulation are to have the care of the person, maintenance, and if a minor, the education of the ward. They are also to vote in the election of a manager for the joint undivided estate as prescribed in Sections 23 and 24, Regulation 8, 1793; and the manager is to account to them for such portion of the profits arising from the estate, as their wards may be entitled to receive, on a fair distribution thereof amongst all the joint proprietors.—*Reg. 1, 1800, Sect. 5.—Benares Reg. 6, 1822, Sect. 2.—Ced. and Cong. Prov. Reg. 8, 1805, Sect. 29, Cl. 12.*

The guardian will receive the minor's share of the proceeds of an estate. The zillah judge cannot interfere in the disposition of minor's property.

214. The guardian of a minor being his representative is entitled to receive the minor's share of the proceeds of an estate, if managed by a surburakar; and the zillah Judge has no authority to interfere with him in the disposition of the minor's property.—*Con. 654, 19th Aug. 1831.*

215. Estates under charge of a manager elected as stated in the foregoing section, shall be held answerable for the payment of the revenue assessed thereon, and nothing contained in this Regulation shall be considered as exempting the lands from sale, for the realization of any balances which may at any time become due to Government.—*Reg. 1, 1800, Sect. 6.—Benares Reg. 6, 1822, Sect. 2.—Ced. and Cong. Prov. Reg. 8, 1805, Sect. 29, Cl. 13.*

*Estate under charge of managers so elected liable to be sold for balance of revenue*

216. If any person shall think himself aggrieved by any act done by any of the zillah Judges in the exercise of the authority vested in them by this Regulation, he is at liberty to state his complaint by petition, either to the Judge in person, or to the Court of Sudder dewanny adawlut, and whenever any such complaint shall be made, the Judge is to certify a copy of the petition and of all his proceedings in the case to which it relates to that court, who are authorized to confirm or rescind his decision as to them shall appear just and proper, and their judgment in all such cases is hereby declared to be final. All proceedings and papers which may be submitted to the Sudder dewanny adawlut under this section, are to be accompanied by true and faithful translations into the English language.—*Reg. 1, 1800 Sect. 7.—Benares Reg. 6, 1822, Sect. 2.—Ced. and Cong. Prov. Reg. 8, 1805, Sect. 29, Cl. 4.*

*Mode in which redress may be obtained by persons considering themselves aggrieved by any act performed by the zillah judges under this regulation.*

217. I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of your letter of the 16th ultimo and its enclosures, requesting the Court's construction of Regulation 1, 1800, as relates to the power of the Provincial courts of appeal to receive appeals from orders passed under that Regulation by the Zillah and City courts, and in reply to acquaint you, that the Court are of opinion, that the Provincial courts of appeal have no jurisdiction in the cases provided for by the Regulation in question: but that the parties dissatisfied with the orders of the zillah and city Judges must appeal to this Court.—*Con. 596, 24th June 1831.*

*From the order of a zillah judge appointing a guardian an appeal lies only to the S. D. A.*

218. With regard to the second point, namely, appointing a guardian to the minor, if he be considered the adopted son of the widow's husband, you must be guided by the provisions of Regulation 1, 1800, which authorize the appointment, by the Civil court, of a guardian to a minor landholder, provided he be a sharer in a joint estate paying revenue immediately to Government, and all the other sharers be not disqualified persons. Your appointment of a guardian in such case would be subject to the control of this Court, in the mode provided for by Section 7 of the above quoted Regulation.—*Con. 310, 1st Jan. 1820, par. 5.*

*The zillah judge may appoint a guardian of a minor alleged to have been adopted by a widow, if he claim to be a sharer in a joint estate.*

219. I am directed to inform you that if the estate of the minor is a joint undivided estate, you should, on the application of the minor's mother, appoint a guardian under the provisions of Regulation 1, 1800, and report your nomination for the confirmation of the court.—*Con. 663, 16th Dec. 1831, par. 2.*

*If the estate of the minor is a joint undivided one, the zillah judge, on the application of his mother, will appoint a guardian under reg. 1, 1800.*

220. I am directed by the Court to acknowledge the receipt of your letter of the 25th August last, and its enclosures, and in reply to inform you that the Court, being of opinion that there is nothing in the provisions of Regulation 1, 1800, which restricts its application to the case of minor heirs of joint undivided estates paying revenue immediately to Government, sanction the appointment of the following guardians [to minors, whose estates pay revenue to zemindars and others, and not immediately to Government.]—*Con. 913, 24th Oct. 1831.*

*The S. D. A. also sanction the judges appointment of guardians to minors whose estates pay revenue to zemindars, and not immediately to govt.*

Nominations of minors to be submitted for the approval of the S. D. A.

221. I am directed by the Court to request that you will in future submit all nominations of guardians appointed under Regulation 1, 1800, for the approval of the court in one of the accompanying forms, as the case may require.

Form of nomination

Form for nomination of a guardian under Regulation 1, 1800

1	2	3	4	5	6
Name of the deceased proprietor with date of his death	Names of the minors, with their ages and relationship to the deceased.	Name of the estate with pargannah and zillah, and to what share the minors are entitled	Name of the guardian.	Statement of his relationship to the minors, or his connection with the family as a servant or friend	Whether he undertakes the trust gratuitously, or on a stipend, and if on a stipend the amount of it, and its proportion to the produce of the estate.

—*Gen. Ord. Cal. and West C. 14th Dec 1832*

When objections exist to conferring the guardianship on the next of kin, the judge will appoint some respectable person guardian.

222. The Court of Sudder dewanny adawlut have had before them your letter, dated the 25th ultimo, requesting to be informed, whether a minor can execute a power of attorney to a constituted vakel of the court to defend a suit instituted against the minor's father in his lifetime or whether the suit must remain for investigation until the minority of the boy expires. By Section 1, Regulation 1 of 1800, it is provided that whenever any objections to conferring the trust on the next of kin may exist, the Judge shall nominate some other person of character and respectability to act as guardian of the minor. But in the case out of which your reference originated, it appears, that the minor has no relation whatever; under which circumstances, the Court are of opinion, that the provisions of the rule above quoted might, by analogy, be extended to his case, and that you should select some competent person to act as his guardian. You will be pleased therefore to make a selection of some individual accordingly, attending to the rules laid down in Regulation 1 of 1800, and the person so appointed by you will be competent to nominate a vakel to conduct the defence of his ward. — *Con. 398, 5th Aug. 1825.*

That guardian may appoint a vakel to carry on a suit instituted against the minor's father.

Guardians and managers will exercise their own judgment in managing the estates of minors.

223. Guardians or managers appointed under Regulation 1, 1800, must be left to exercise their own judgment as to the best mode of managing the estates of the minors committed to their care.—*Con. 663, 16th Dec 1831.*

The guardians of joint undivided estates who may be disqualified for the management of their own concerns, shall exercise the same powers as could be exercised by the proprietors, if qualified.

224. In cases in which one or more of the proprietors of a joint undivided estate may be minors, or may be otherwise disqualified for the management of their own concerns in consequence of natural defects or infirmities, the guardians of such persons, whether nominated by the will of their parents, or by the zillah Judges under Regulation 1, 1800, shall superintend the interests of such disqualified persons, and shall exercise the same powers in the management of the estate of their wards as could be exercised by the

proprietors themselves, were they qualified for the direction of their own affairs.—*Reg. 17, 1805, Sect. 5.*

225. In reply to your reference I am directed to state that the Civil courts are not expected to call on guardians appointed by them under Regulation 8, 1805, [Regulation 1 of 1800] to deliver up their accounts for their inspection; nor are those courts competent to exercise any active interference in the management of the property belonging to the ward. On the receipt, however, of credible information against the character of the guardian, showing him to the court's satisfaction to be unfit for the situation, the court is competent to make enquiry into the matter and to take measures for his removal. For the recovery of any monies or property, which, on investigation the guardian may appear to have embezzled, the Civil court is not empowered to interfere excepting on the institution of a regular suit.—*Con. 720, West. C. 21st Sept., Cal. C. 24th Dec. 1832.*

The civil courts cannot interfere in the management of the minor's property; nor inspect the accounts.

226. In the case of a minor, whose estate is not under the Court of Wards, the executor or guardian must, during the minority, stand in the place of the minor and be subject to all the rules of suit and defence to which the minor himself would be subject were he not a minor.—*Con. 335, 2d Feb. 1821.*

The minor's guardian is subject to all the rules of suit and defence, to which the minor himself would be subject.

## SECTION XVI.

### *Suits by and against Guardians—Debts during Minority—Miscellaneous Rules.*

227. Minors and other disqualified landholders having guardians, as described in Section 22, shall not be sued but under the protection and joint name of their guardians.—*Reg. 10, 1793. Sect. 32, Cl. 1*

Minors, and others having guardians, not to be sued, but under the protection and joint name of their guardians.

228. A minor, through his guardian, may sue the Collector, for having, under the authority of the Court of Wards, disposed of the minor's estate. The Judge should refer the plaint, under Regulation 2, 1814, to the Board of Revenue, and proceeded to the trial of it under Clause 4, Section 3 of that Regulation, in the event of its not being deemed requisite by that authority to direct redress to be afforded.—*Con. 110, 16th Dec. 1825.*

The minor through his guardian may sue the collector, for selling his estate. Course to be pursued.

229. The Sudder dewanny adawlut will not interfere summarily to put a guardian in possession of the papers and accounts of property, to which the right of his ward is contested.—*Rep. Sum. Cases, 13th March 1837, p. 14.*

The S. D. A. will not interfere summarily to put the guardian in possession of papers and accounts.

230. A claim against a guardian appointed under Regulation 1 of 1800, by his recent ward, cannot be summarily enforced.—*See Construction 720.—Rep. Sum. Cases, 9th May 1842, p. 30.*

A claim by a ward against a guardian cannot be summarily enforced.

231. A decree for damages against A., who alleged himself to be the guardian of B. and C., held by the Sudder dewanny adawlut to be personal, and not to confer on A. any exemption from liability, nor subject the estate of B. and C. to be sold in execution thereof.—*Rep. Sum. Cases, 29th Jan. 1839, p. 16.*

A decree for damages against an alleged guardian decreed to be personal, and not to involve the interests of the estate.

232. Claim by appellant to recover a sum on a bond, the bond being given in lieu of principal and interest on two former bonds, which were executed in favor of the plaintiff, while he was acting as guardian and *mookhtar* of the parties bound by them, and the third bond being also executed under similar circumstances, the court rejected his claim.—*S. D. A. Sel. Rep. 9th Feb. 1825, vol. 4, p. 17.*

The S. D. A. rejected a claim to recover a sum on bond executed in favor of the plaintiff while acting as guardian & minor.

Case in which the minor was not called to refund a sum said to have accrued on his estate. But if the account shewed that it had been really advanced, the security was entitled to credit for it.

233. Judgment having been given for the recovery of a debt alleged to have accrued on the estate of a minor, against a person who had voluntarily become his security and which debt the minor denies having been due [he not having been cognizant of the suit,] held not to be sufficient to establish the reality of the debt, and consequently not to make it necessary for the minor to refund the amount, with a reservation however that if, on production of accounts, it could be proved that the money was in reality advanced for the estate, the security would be entitled to credit for it.—*S. D. A. Sel. Rep. 29th April 1808, vol. 1, p. 234.*

A *tehseldar* on an adjustment of accounts will be reimbursed the sum he may have borrowed, to discharge the government revenue while acting for the minor.

234. A person officiating for a minor in the capacity of *tehseldar*, and borrowing money in his own name to discharge the Government revenue, will be solely responsible in the first instance for the repayment of it, even after his removal from the office, and the minor's succession to it; but on an adjustment of accounts he is entitled to be reimbursed by the latter, should the debt appear to have been really incurred on his account, and *bona fide* chargeable to him.—*S. D. A. Sel. Rep. 22d May 1815, vol. 2, p. 151.*

In a suit against a minor and guardian jointly, for rents unduly levied during minority, the latter only is liable in the first instance.

235. In a suit instituted against a minor landholder and his guardian jointly to recover rents unduly levied during the minority of the former, held that the latter only is liable, in the first instance, notwithstanding the former may have attained to majority before the final decision of the suit, with liberty to sue for reimbursement, if he think fit.—*S. D. A. Sel. Rep. 26th March 1821, vol. 3, p. 83.*

A guardian's takes a conveyance from a minor for expenditure on his account. It is disallowed for its extravagance, and on the ground of minority.

236. A. had managed the estate of B, a minor; and to B [ ] 15 years, a conveyance, in consideration of an alleged debt, for expenditure on his account,—which appeared grossly extravagant. Conveyance set aside, with reference to this, and the minority of B.—*S. D. A. Sel. Rep. 26th April 1831, vol. 5, p. 111.*

The heir is responsible for a debt contracted by the manager solely for the benefit of the property.

237. A surburakar, or manager, in the management of certain property alleged to belong to a minor, contracted a loan to pay off debts originally incurred on conditional sale of such property by A, the former proprietor. On the suit of B, claiming to inherit from A, a decree was passed in his favour and against the rights of the minor. Held, that under such circumstances, B was responsible for the repayment of the loan, it having been satisfactorily proved that the debt was incurred by the manager entirely for the benefit of the property.—*S. D. A. Sel. Rep. 11th Jan. 1836, vol. 6, p. 47.*

An estate is liable to be attached and sold, for a decree against a guardian who had borrowed money to save it from sale for arrears.

238. A guardian having borrowed money to save his ward's estate from sale for arrears of revenue, held that such estate is liable to be attached and sold in execution of a decree obtained against the guardian, for payment of the debt.—*Rep. Sum. Cases, 10th May 1838, p. 15.*

The S. D. A. in a particular case orders a guardian to be restored to office who had been dismissed by the judge.

239. The Court observe that the appointment of the guardian having been confirmed by them you should not have removed him, Moamtazodeen being still in his non-age, without their sanction. They do not consider the reasons assigned by you sufficient to warrant his removal, for though the possession of the estate, for the protection of which he was appointed, is in the hands of the opposite party, the claim of the minor thereto remains to be decided, and the continuance of the guardian may be necessary to bring forward, and prosecute a suit to recover possession in the Civil court in a regular manner. The Court therefore annul that part of your order, and direct that the guardian be restored to his office.—*Con. 666, 6th Jan. 1832.*

The judge cannot entertain an establishment to manage

240. I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of your return of the 15th February to the Court's precept of 19th January last, and its

enclosures, on the subject of the appointment of certain officers to manage the accounts of the estate of certain wards of your court, the court observing that the Regulations in force do not authorize the entertainment of the establishment in question, and being of opinion that it is unnecessary, deem it proper to annul your order of the 11th June last.—*Con.* 682, 16th March 1832.

the estate of orphan wards of the court.

241. On an application to the Sudder dewanny adawlut, made on the part of a guardian of a deaf and dumb person, appointed under Regulation 1, 1800, to be allowed to appeal *in forma pauperis* on behalf of his ward by presenting his petition through an authorized agent, it was held that a petition to be allowed to appeal *in forma pauperis* cannot be received through an agent, from any person not being a female of the rank and description stated in Clause 1, Section 5, Regulation 29, 1814.—*Con.* 1251, *Cal. C.* 4th Oct, *West. C.* 8th Nov. 1839.

A guardian of a deaf and dumb person refused permission to present a petition to be allowed to appeal *in forma pauperis* through an agent.

242. I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, No. 133, and in reply to inform you that the bond in the case therein alluded to should be retained in the custody of the court until the lapse of twelve years from the resignation of the trust, or from the date of the minor's attaining his majority, unless the minor on coming of age should consent to his being restored to the parties concerned.—*Con.* 918, 1st May 1835.

The period for which the security bond furnished by a guardian on undertaking the trust of a minor should be retained in the court

243. It appears from the proceeding of the Judge of zillah Mymensingh, dated 19th February, 1831, that while the marriage ceremony of Musst Noor-oon-missa Khatoon, daughter of Mosummat Chand Behee deceased, with Moulyee Tameezooddeen, was suspended in consequence of a difference of opinion between the Judges of the Court of appeal and the zillah Judge, an order having been issued by the Judge forbidding the marriage of the said Noor-oon-missa with any person whatever until an order should be issued to that effect; Moulyee Abdool Ulee, son of Moulyee Burkutoolah Khan, without giving information to the said gentleman or obtaining his permission, and without any intimation to Golam Abool Lys Chowdree, the half brother of the said Noor-oon-missa who is also her guardian, married her. It is also understood from a petition of the said Noor-oon-missa, that she has arrived at the age of puberty and that she with her own free will and consent married Moulyee Abdool Ulee aforesaid. Under these circumstances, and as the said Noor-oon-missa acknowledges that she has attained to the age of puberty and that this marriage has taken place agreeably to her own free will and consent, and as the Judge's order was passed under the supposition of her being a minor, her marriage with Abdool Ulee, although it may have taken place without information given to the Judge and guardian, or obtaining their permission, is valid and binding according to law, and Abdool Ulee aforesaid cannot in consequence of this marriage and such disobedience of orders be considered criminal or liable to punishment.—*Con.* 637, 27th May 1831.

The clandestine marriage of a female placed under a guardian appointed under reg 1, 1800 is not punishable in the criminal courts.

244. Administration to the property of an intestate Mahomedan, without the limits of the jurisdiction of Her Majesty's Supreme Court, refused to the Registrar of that court by the Presidency Sudder dewanny adawlut.—*Rep. Sum. Cases*, 22d June 1840, p 37.

Administration to the property of an intestate Mahomedan beyond the jurisdiction of the supreme court refused to the registrar.

245. The Court of Sudder dewanny adawlut decreed to a sharer possession of her share under the provisions of Section 13, Regulation 3, 1793, though she was not an original plaintiff in the suit.—*S. D. A. Sel. Rep.* 29th May 1817, vol. 2, p. 237.

The S D A decreed to a sharer possession of her share under reg 3, 1793, sec 13, though not an original plaintiff.

246. Held that an action by a person as friend or next of kin to devisees under a will, one of the executors under the will being alive, is irregular, and dismissed accordingly.—*S. D. A. Sel. Rep.* 24th Nov. 1842, vol. 7, p. 119.

While an executor is alive, an action by the friend or next of kin to devisees under a will, is irregular.



## SECTION XVII.

*Charge of Property belonging to Intestates, particularly British Subjects,—and to unclaimed Property*

The judges how to proceed in cases of persons dying intestate, leaving personal property to which there may be no claimant.

247. The Judges of the Zillah or City courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property ; and that there is no claimant to such property, are to adopt such measures as may be necessary for the temporary care of the property, and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose ; such advertisement to be published on the spot where the property was found ; at the Dewanny adawlut cutcherry of the zillah or city, and, if ascertainable, at the dwelling-place of the deceased ; or if the deceased were an European, in the Calcutta Gazette ; after which should any person attend and satisfy the Judge of his title to the property, or to receive charge thereof as executor, administrator, or otherwise, the same is to be delivered up to him ; on repayment of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months next ensuing, an inventory of the property and report of the circumstances of the case is to be transmitted to the Governor General in Council for his orders.—*Reg. 5, 1799, Sect. 7.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 16, Cl. 7.*

A demand for security before giving possession of the property of an intestate, not legal.

248. A demand for security before giving possession of the property of an intestate to his proved heir and in the absence of other claims, is not warranted by the provisions of Section 7, Regulation 5, 1799.—*Rep. Sum. Cases, 14th Dec. 1846, p. 88.*

Instead of separate inventories, a general statement of all property in the hands of the judge will be annually submitted.

249. The Court direct, in pursuance of instructions from the Government, that in lieu of a separate inventory, in each instance, of property of intestates unclaimed upwards of twelve months, you will in future submit to the Government, at the close of every year, a general statement of all property of the kind, which may be in your custody for a period exceeding twelve months after the issue of notice for the appearance of heirs or claimants—*Cir. Ord. 3d Jan. 1845.*

No suit can be instituted to establish claims of creditors on the property of intestates before the expiration of a twelve-month, as above.

250. To remove doubts regarding the disposal of claims of creditors on the property of persons who die intestate, no heirs being forthcoming, the Court are pleased to declare that no suit can be instituted for the establishment of such claims, before the expiration of the twelve months specified in Clause 7, Regulation 5, 1799, and Clause 7, Section 16, Regulation 3, 1803, since before that period the service of the notice required by Section 2, Regulation 2, 1806, is impracticable—*Cir. Ord. 14th Feb. 1845, par. 1.*

Course to be pursued in the case of such claims, when the property is carried to the credit of government.

251. Any claims on such property, which may be preferred to the Judge within the limited time should, in the event of the property being carried to the credit of Government at its close, be reported to the Government for its orders. Should the claims be rejected, the claimants will be at liberty to bring a regular suit against the Government in the Courts of justice.—*Ibid, par. 2.*

252. The Courts of Sudder dewanny adawlut for the Lower and North Western Provinces are pleased to intimate that so much of Construction No. 541, as declares that the period of twelve months allowed by Section 7, Regulation 5, 1799, corresponding with Clause 7, Section 16, Regulation 3 of 1803, for the appearance of claimants to the property of persons dying intestate, shall be calculated from the date of the proprietor's decease, is rescinded as being at variance with the terms of the law cited. The period in question should be reckoned not from the date of the proprietor's decease, but from the date on which publication of the several advertisements required by the law cited, shall be duly certified.—*Cir. Ord. 23d Dec. 1846.*

From what date the period of 12 months allowed by sec. 7, reg. 5, 1799, is to be calculated.

253. The Court of Sudder dewanny adawlut have had before them your letter, dated the 6th instant, requesting the Court's instructions as to the mode necessary to be adopted respecting the disposal of sundry bonds, tumusooks, &c. deposited in your court, belonging to persons dying intestate.—In reply, I am desired to refer you to the rule contained in Section 7, Regulation 5, 1799, by which you will perceive, that an inventory of all personal property, unclaimed after the period of twelve months from the decease of the proprietor, should be transmitted to the Governor General in Council for his orders; and to direct that, with regard to the description of property specified in your letter, you adopt the same course of proceeding.—*Con. 541, 19th March 1830.*

An inventory of all bonds, tumusooks, &c. deposited in the court belonging to those who die intestate, must be annually transmitted to the governor general

254. Held on a reference from the Judge of Rungpore that hoondrees or other obligations for the payment of money, appertaining to the estates of parties dying intestate, may be realized by the Civil court on falling due, and the amount kept in deposit until the expiration of the period of twelve months specified in Section 7, Regulation 5, 1799. But the interference of the Civil court should be limited to the simple presentation of instruments payable at a fixed period, the failure to present which would involve a risk of loss, and to the realization of monies indisputably due thereon, and not extend any further, or include the assertion and prosecution of denied or disputed claims.—*Con. 1286, Cal. C. 14th Aug., West. C. 4th Sept. 1840.*

Hoondrees & other money obligations belonging to the estates of intestates may be realized by the civil court, when due. What kind of instruments may be thus presented for payment

255. The Governor General in Council authorizes the zillah and city Judges to grant a commission not exceeding one anna in the rupee, on the proceeds of unclaimed property which may be sold with the previous sanction of Government. The commission in question is to be paid to the nazir as a remuneration for proper care in the preservation of the property, and for seeing that it is fairly and properly sold at auction, subject to the condition, that the duty shall, in each case, have been performed to the Judge's satisfaction.—*Cir. Ord. 25th Feb. 1820.*

One anna in the rupee commission to be granted to the nazir as a remuneration for his preservation of the property of intestates.

256. I am directed by the Court to inform you, that with reference to the Circular order of the 25th February, 1820, which authorizes the payment to the nazirs of the Civil courts of a commission of one anna per rupee on the proceeds of unclaimed property of persons dying intestate, which may be sold by them, the Government have been pleased to sanction the extension of the rule to the nazirs of the Foujdary courts, who may be ordered to sell unclaimed or lawaris property.—*Cir. Ord. 12th Aug. 1842.*

The same commission allowed for the sale of unclaimed, or lawaris property

257. With regard to the custody and disposal, on the other hand, of the property of persons dying intestate (lawaris), the Court direct me to observe, that Section 7, Regulation 5, 1799, Bengal code, contains a specific provision, and declares that should no claim be preferred to it for the space of twelve months, an inventory of the property together with a report of the circumstances of the case, shall be submitted, by the Judge, to the Governor General in Council, for his orders: whenever, therefore, any property of that description may come

When any property of an intestate estate comes into the hands of the magistrate, he will forward it to the Judge of the district.



FORM No. 2 *Zillah* ————— *Fouzdary Adawlut.*  
Register of lawaris property disposable under Section 7, Regulation 5 of 1799

1	2	3	4	5	6	7	8	9
Names of thumals	Names of individuals deceased	Description of property	Date of arrival at the thumal	Date of arrival at the post-office station	Date of deposit of property to the civil court	Signature of the nazir	Date of receipt given by the civil authority	Remarks

—*Co. Ord.* 24th Nov. 1813.

261. Section 7, Regulation 5, 1799, prescribes rules for the guidance of the zillah and city Judges, with respect to the charge of the undclaimed assets of estates of Europeans dying intestate. It being however enacted, in Statute 39, George 3d, chapter 79, section 21, that whenever any British subject shall die intestate, and neither a creditor, nor the next of kin shall apply for letters of administration, the Register of the Supreme Court shall administer to the estate of the deceased; it shall be the duty of the zillah and city Judges, whenever any British European subject shall die within the limits of their jurisdictions, and no will shall be found among the effects of the deceased, to report the circumstance without delay to the Register of the Supreme Court of Judicature, retaining the property under their charge, until letters of administration shall have been obtained by that officer, or by some other person from the Supreme Court of Judicature, when the property is to be delivered over to the person obtaining such letters; or, in the event of a will being subsequently discovered, to the person who may obtain probate of the will. *Reg.* 15, 1806, *Sect.* 6.

*Sec.* 7 reg 5, 1799, modified

Judges to report to the register of the supreme court respecting estates of deceased British European subjects, retaining in the mean time the property under their charge

262. Question 1st.—Is the interference of the civil Judge, by Section 16, Regulation 3, 1803, and Section 6, Regulation 15, 1806, strictly limited to the cases of persons dying intestate or not?—In reply to your first question I am directed to inform you that the interference of the Civil court with respect to the estates of deceased British subjects, is not restricted by the sections of the Regulations above quoted to the cases of persons dying intestate, but on the contrary Section 6, Regulation 15 of 1806, expressly requires, that on the demise of a British European subject within the limits of the jurisdiction of a Zillah or City court, the Judge shall take charge of the effects of the deceased, and on a will being discovered, shall deliver them over to the person who may obtain probate thereof.—*Con.* 983, *West. C.* 16th Oct., *Cal.* C. 13th Nov. 1835.

On the demise of a British European subject within the limits of a zillah or city court, the judge will take charge of the effects, & on a will being discovered make them over to the person who obtains probate

263. Question 2d.—Though the will of the deceased be not forthcoming or no will may exist, ought the civil Judge to interfere if there be “a claimant,” a near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property?—In answer to your second question I am directed to observe that in either of the cases which you have supposed, where the will of the deceased is not forthcoming, or where none may be in existence, notwithstanding that there may be a claimant, near relation, or respectable friend on the spot, willing to take charge of and to be responsible for the property, the Regulation before cited renders it obligatory on the Civil court to interfere, as in the case described in the preced-

When the will is not forthcoming, or may not exist, though there be a claimant, relative, or friend on the spot willing to take charge, the civil court must interfere and be responsible for the property, until the supreme court has given letters of administration to the registrar, or some one

else, when the property should be delivered to him.

ing paragraph, and to retain charge of the estate until the Registrar of the Supreme Court of Judicature, to whom the circumstance is immediately to be reported, or some other person, shall have obtained letters of administration from that court, when the property is to be delivered over to the person to whom such letters may have been granted. The terms of the enactment being imperative and express as to the jurisdiction to be exercised by the Zillah courts in such cases, the Court observe that no discretion whatever is left to the Judge in the matter.—*Con. 983, West. C. 16th Oct, Cal. C. 13th Nov. 1835.*

Interpretation of sec. 6, reg. 15, 1806.

264. Doubts being found to exist in regard to the interpretation of Section 6, Regulation 15 of 1806, notwithstanding the exposition of that enactment, contained in Construction 983, dated 16th October, 1835, it is thought advisable to promulgate for the information and future guidance of the civil Judges in the Lower Provinces, the issue of a correspondence which has recently passed on the subject with the Sudder dewanny adawlut in Agra. — *Cir. Ord. 3d June 1845, par. 1.*

If a will be found among the effects of a European British subject before the J has received charge by setting his seal on the effects, his interference is barred, whether the executor be present or not.

If after the judge has taken charge, a will is produced, he must retain it till probate has been granted by the supreme court.

265. It has been concurrently ruled by both courts, that if a will be in existence, and be found among the effects of a deceased British subject, before the Judge have formally, by the imposition of the seal of his court, received charge of the said effects, his interference is clearly barred by the terms of the enactment cited, whether trustee or executor appointed in such will be present on the spot or not, and that, if after the Judge have taken charge of the estate, a will should be discovered, and produced, it would still be obligatory on him to retain charge until probate of the said will might be obtained from the Supreme Court, whether trustee or executor appointed by the deceased, or other party, willing to receive, and be responsible for the property, were present at the time and place of the testator's decease or not.—*Ibid, par. 2.*

## SECTION XVIII

### *Possession and Management of the Estate of a deceased Person not under the Court of Wards.*

Executors to Hindoos, Mahomedans, & others not being disqualified landholders, may take charge of the estate of the deceased, and proceed in execution of their trust, without any application to the judge, or other officer of government.

Courts of justice prohibited interfering in such cases, except on a regular complaint.

To proceed in such complaint according

266. In all cases of a Hindoo, Mussulman, or other person subject to the jurisdiction of the Zillah and City courts, having at his death left a will and appointed an executor or executors to carry the same into effect, and in which the heir to the deceased may not be a disqualified landholder, subject to the superintendence of the Court of Wards, under Regulation 10, 1793, or any other Regulation, relative to the jurisdiction of the Court of Wards, the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust, according to the will of the deceased, and the laws and usages of the country, without any application to the Judge of the Dewanny adawlut or any other officer of Government, for his sanction; and the Courts of justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust, or otherwise, when they are to take cognizance of such complaint, in common with all others of a civil nature, under the general rule contained in Section 8 of Regulation 3, 1798; and proceed thereupon according to the Regulations: taking the opinion of their law officers upon any legal exception to the executors as well

as upon the provision to be made for the administration of the estate in the event of the appointed executor being set aside ; and generally upon all points of law that may occur ; with respect to which the Judge is to be guided by the law of the parties, as expounded by his Law Officers ; subject to any modifications enacted by the Governor General in Council in the form prescribed by Regulation 41, 1793.—*Reg. 5, 1799, Sect. 2.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 16, Cl. 2.*

to the regulations, taking the opinion of their law officers on all points of law.

267. In case of a Hindoo, Mussulman, or other person subject to the jurisdiction of the Zillah or City courts, dying intestate, but leaving a son or other heir, who by the laws of the country may be entitled to the whole estate of the deceased, such heir, if of age and competent to take the possession and management of the estate, or if under age, or incompetent, and not under the superintendence of the Court of Wards, his guardian, or nearest of kin, who by special appointment or by the law and usage of the country may be authorized to act for him, is not required to apply to the Courts of justice for permission to take possession of the estate of the deceased as far as the same can be done without violence, and the Courts of justice are restricted from interference in such cases, except a regular complaint be preferred, when they are to proceed thereupon according to the general Regulations —*Reg. 5, 1799, Sect. 8.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 16, Cl. 3.*

Heirs of persons dying intestate, entitled to succeed to the whole estate (and not subject to the court of wards,) or their guardians not required to apply to courts of justice for permission to take possession of the estate as far as can be done without violence

And courts of justice restricted from interference without a regular complaint.

268. Held that the Sudder dewanny adawlut have the power of summarily interfering to the extent of directing the appointment of a co-guardian and manager to act conjointly with the guardian and manager of a minor's estate, under Regulation 5 of 1799, when such guardian and manager may be disqualified for the proper management of the estate.—*Rep. Sum. Cases, 22d June 1810, p. 41.*

The S. D. A. may summarily interfere and appoint a co-guardian where the guardian is disqualified to manage the estate.

269. If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession ; and the Courts of justice are restricted from interference, without a regular complaint, as in the case of a single heir.—*Reg. 5, 1799, Sect. 4.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 16, Cl. 4.*

More heirs than one, to the estate of an intestate, may appoint a common manager and take possession, as in the case of a single heir.

270. But if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the Judge on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit ; or, in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may be able to give such security ; declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties ; but to be considered merely as an administration to the estate for the benefit of the heirs, who may on investigation, be found entitled to succeed thereto.—*Reg. 5, 1799, Sect. 4.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 16, Cl. 4.*

But if the right of succession be disputed, the judge, on a regular suit, to take security from the party in possession.

Or, in default of such security, may put the other claimants, giving it, in possession.

Such possession not to affect the right of property.

If the existence of a will be disputed between the heirs, security may be demanded under sec. 4, as above.

Decision of the S. D. A. in a particular case in reference to the application of sec. 4, as above.

271. If the existence of a will be disputed between the heirs of a party deceased, security may be demanded under Section 4, Regulation 5, 1799.—*Rep. Sum. Cases, 3d July 1845, p. 69.*

272. *Bafutoonissa* adopted *Moomtazodeen*, in 1225, B. S., and made over her estate to him by deed of gift, retaining possession as manager for her adopted son through *Hamud Meean*, her *gomashtah*, who after her death continued in possession till he died in 1236, B. S., when *Nuzzuroodeen*, brother of *Bafutoonissa*, took possession in right of his daughter, *Uzmutoonissa*, who had been married to *Moomtazodeen* by *Bafutoonissa*, in virtue of a deed of gift alleged to have been executed on his marriage by *Moomtazodeen* with the consent of *Bafutoonissa*. *Moomtazodeen* being a minor, *Gour Gopal* was appointed his guardian at the instance of his brother *Aklakuolla*, and claimed the estate under the original deed of gift of *Bafutoonissa*. The court, presuming *Nuzzuroodeen* to have taken possession on the death of the *gomashtah*, were of opinion that under Section 4, Regulation 5, 1799, his possession should not be disturbed, unless, on the institution of a regular suit by the opposite party, he should be unable or neglect to give security which in that case would be required of him.—*Con. 651, 5th Aug. 1831.*

But security cannot be demanded in case of dispute between the heirs unless occurring immediately on the death of the party.

In what cases the judge may appoint administrator for the care and management of the estate of an intestate

273. Security cannot be demanded under Regulation 5 of 1799, in cases of dispute between heirs of a party deceased, unless occurring immediately upon his death.—*Rep. Sum. Cases, 14th Aug. 1817.*

274. In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding section, and in all cases where in there may be no person authorized and willing to take charge of the landed estate of a person deceased, the Judge within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the estate may lie, in the event of its being situated within two or more jurisdictions,) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined; or, in the latter case, until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator or otherwise, shall attend and claim the same; when if the Judge be satisfied that the claim is well founded; or if the same be established after any enquiry that may appear necessary, the administrator appointed by the court shall deliver over the estate to him with a full and just account of all receipts and disbursements during the period of his administration.—*Reg. 5, 1799, Sect. 5. —Ced. and Cong. Prov. Reg. 3, 1803, Sect. 16, Cl. 5.*

And when such administration is to cease.

Sec 4 & 5, reg 5, 1799, apply only to cases of disputed succession among heirs.

275 The provisions of Sections 4 and 5, Regulation 5, 1799, apply only to cases of disputed succession among heirs at law, and not to those of parties claiming upon special grounds.—*Rep. Sum. Cases, 25th May 1817.*

Security to be taken from administrators appointed under this regulation

And in what manner their allowance is to be fixed.

276. In all instances of an administrator being appointed under this Regulation, he is, previous to entering upon the execution of his office, to give good security for the faithful discharge of his trust in a sum proportionate to the extent thereof: and the Judge appointing him is authorized to fix for him (subject to the approbation of the Court of Sudder dewanny adawlut, to whom a report is to be made in such instances) an adequate personal allowance to be paid out of the proceeds of the estate; and to be a percentage

thereupon after deducting the expences of management.—*Reg. 5, 1799, Sect. 6.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 16, Cl. 6.*

277. Section 26, Regulation 5, 1812, declaratory of the competency of the zillah Judge to interfere in cases of disputes between proprietors of joint undivided estates for the due discharge of the public revenue, held by the Sudder dewanny adawlut to be decidedly inapplicable to the removal of executors and guardians, in possession of property, under the provisions of Regulation 5 of 1799.—*Rep. Sum. Cases, 4th April 1835, p. 7.*

Sec. 26, reg. 5, 1812, not applicable to the removal of executors and guardians of property under reg. 5, 1799.

278. The Civil courts are restricted by Regulation 5, 1799, from interfering with the succession to the estate of a person deceased, without the institution of a regular civil suit, except in the special cases provided for.—*S. D. A. Sel. Rep. 16th July 1819, vol. 2, p. 307.*

Except in special cases provided for, the civil courts cannot interfere with the succession to the estate of a deceased person, without a regular suit.

279. In a case in which the principals, who had obtained an order for possession of property under Regulation 5, 1799, made over such property temporarily to their sureties, it was held that the Civil court could not summarily interfere in a dispute between the principals and sureties, in regard to the proper discharge of the trust.—*Rep. Sum. Cases, 1st June 1847.*

Where the principals under reg. 5, 1799, have made over property to sureties, the civil court cannot summarily interfere in a dispute between the parties.

## SECTION XIX.

### *Succession to Property among Hindoos and Mahomedans—Heirs.*

280. After the first of July, 1794, corresponding with the 20th Assar, 1201, Bengal era; the 17th Assar, 1201, Fusselv; 20th Assar, 1201, Willaity; 17th Assar, 1851, Sumbut; and the second Zohigh, 1208, Hyree; if any zemindar, independant talookdar, or other actual proprietor of land, shall die without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve after his or her demise, and shall leave two or more heirs, who, by the Mahomedan or Hindoo law, (according as the parties may be of the former or latter persuasion) may be respectively entitled to succeed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled.—*Reg. 11, 1793, Sect. 2.—Benares Reg. 44, 1795, Sect. 2.*

After the 1st July, 1794, landed property to descend according to the Mahomedan or Hindoo law, unless the last proprietor shall have otherwise disposed of it, in a manner sanctioned by those laws.

281. Nor to prohibit any actual proprietor of land bequeathing, or transferring, by will, or by a declaration in writing, or verbally, either prior or subsequent to the 1st July, 1794, his or her landed estate entire to his or her eldest son, or next heir, or other son or heir, in exclusion of all other sons or heirs, or to any person or persons, or to two or more of his or her heirs, in exclusion of all other persons or heirs, in the proportions, and to be held in the manner, which such proprietor may think proper, provided that the bequest or transfer be not repugnant to any Regulations that have been or may be passed by the Governor General in Council, nor contrary to the Hindoo or Mahomedan law; and that the bequest, or transfer, whether made by a will, or other writing or verbally, be authenticated by, or made before such witnesses, and in such manner, as those laws and Regulations respectively do, or may require.—*Reg. 11, 1793, Sect. 6.—Benares Reg. 44, 1795, Sect. 6.*

Nor to prevent persons transferring their property in the manner and to whom they may think proper, provided the transfer be not repugnant to the Hindoo or Mahomedan law, or the regulation of the G. G. in C.



Reg. 11, 1793, not to operate in the jungle mehals of Midnapore and other districts

282. Regulation 11, 1793, shall not be considered to supersede or affect any established usage, which may have obtained in the Jungle Mehals of Midnapore and other districts, by which the succession to landed estates, the proprietor of which may die intestate, has hitherto been considered to devolve to a single heir to the exclusion of the other heirs of the deceased. In the mehals in question the local custom of the country shall be continued in full force as heretofore, and the Courts of justice be guided by it in the decision of all claims which may come before them to the inheritance of landed property situated in those mehals.—*Reg. 10, 1800, Sect. 2.*

A ghatwalee estate in Beerbhoom devolves entire on the eldest son, or the next ghatwal.

283. Held, that a ghatwalee mehal in zillah Beerbhoom is not divisible on the death of the ghatwal among his heirs, but should devolve entire on the eldest son or the next ghatwal.—*S. D. A. Sel. Rep. 19th June 1837, vol. 6, p. 169.*

General rule of succession to an estate in Manbhoom

284. In the case of an estate in Manbhoom, in the jurisdiction of the Governor General's Agent at Hazareebagh, it was held that the succession is vested in the eldest son of the deceased rajah born of any of his wives, in preference to the eldest son of his past or first rancee.—*S. D. A. Sel. Rep. 8th June 1843, vol. 7, p. 126.*

Decrees for real property to specify the shares of all the claimants

285. The Zillah and City courts are not to pass a decree in any suit concerning the succession or right of inheritance to a zemindary, talook, land, house, or other real property, to which there are more claimants than one, who by the Hindoo or Mahomedan law (respect being had to the religion of the claimants) would be entitled to a portion of the property, excepting the property be by the decree adjudged to all the claimants in the proportions to which they may be respectively entitled.—*Reg. 3, 1793, Sect. 13.*

The rules in reg. 5, 1831, sec. 6, cl. 4 are intended exclusively for the guidance of Moonsiffs.

286. The rules contained in the above clause, [Regulation 5, 1831, Section 6, Clause 4] regarding cases of succession to real property, are intended exclusively for the guidance of Moonsiffs, such being the express tenor of the enactment; the course to be pursued in such cases by Zillah and City courts remaining precisely as it stood previous to the enactment of Regulation 5, 1831.—*Con. 706, Cal. C. 20th July, West. C. 17th Aug. 1832.*

The decisions of the courts to be conformable to the Mahomedan law with regard to Mahomedans, and the Hindoo law with regard to Hindoos, in the cases herein specified

287. In suits regarding succession, inheritance, marriage and caste, and all religious usages, and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws, with regard to Hindoos are to be considered as the general rules by which the Judges are to form their decisions. In the respective cases, the Mahomedan and Hindoo Law Officers of the court are to attend to expound the law.—*Reg. 4, 1793, Sect. 15.—Benares Reg. 8, 1795, Sect. 2.—Ced. and Conq. Prov. Reg. 3, 1803, Sect. 16, Cl. 1.*

The rule not to prevent references to the law officers on points of law.

288. This rule however [viz. the rule in Section 15, given above Rule 287.] is not to be construed to prevent a Judge referring any question arising on the Mahomedan or Hindoo law, to the cazee or pundit of the court, respect being had to the law in which each is conversant. When a reference of this nature is deemed necessary, a statement of the facts, on which the question of law may arise, is to be made out in writing, and signed by the Judge of the court, and delivered to the cazee or pundit for his opinion upon it. A blank is to be left for the answer of the Law Officer on the same paper on which the question is stated, or on a paper firmly annexed to it. The answer is to be attested with the signature of the Law Officer, and the dates on which the questions may

References to the law officers to be made in writing. What they are to contain

Answer on what paper to be written, and what it is to contain.

be stated to him, and the answer may be given, are to be specified.—*Reg. 4, 1793, Sect. 16.*—*Benares Reg. 8, 1795, Sect. 2.*—*Ced. and Cong. Prov. Reg. 3, 1803, Sect. 17.*

289. By Section 15 of Regulation 4, 1793, and Section 3, Regulation 8, 1795, the Judges of the Zillah and City courts are directed to decide (in certain suits therein referred to) according to the Mahomedan or Hindoo laws; and the Mahomedan and Hindoo Law Officers of the court are required to attend to expound these laws, by which it was evidently intended that the Law Officers attached to the several City courts should expound the law in the cases referred to in the above sections; and that the Judges should be guided by such exposition in all common cases wherein they might have no reason to doubt the accuracy of it; but, in particular cases, wherein they might entertain such doubt, either from the objections of the parties, founded on other law opinions exhibited by them; or from a reference to the known books of Mahomedan or Hindoo law; or, from whatever cause, if the Judge or Judges trying the suit should consider the exposition given by their immediate Law Officer insufficient; it was not meant to preclude them from obtaining a further exposition from the Law Officers of the superior courts by a reference of the case to them through the Judges of these courts, as has been the occasional practice in some of the courts, and is now declared to be at the discretion of all the Zillah, City, and Provincial courts, whenever they may deem such reference necessary for the purposes of justice. It is at the same time to be observed that the above courts are not authorized to refer any point of law to individuals not acting in a public capacity; and to whom consequently no responsibility attaches, although there is no objection to any of the courts receiving law opinions, quoting or referring to authorities, tendered to them by the parties during the trial of the suit in support of their claims, and if the courts shall deem it proper so to do, referring them to their own Law Officers, or those of the superior courts, to enable them to determine on their due weight and application to the case.—*Reg. 2, 1798, Sect. 4.*

*Explanation of sec. 15, reg. 4, 1793, and sec. 3, reg. 8, 1795.*

Intended that the law officers of the several civil courts should expound the law, and that the judges should be guided by their exposition in common cases. But not in particular cases wherein they might have reason to doubt the accuracy of such exposition.

In such cases, a further exposition of the law from the officers of the superior courts not meant to be precluded.

But the courts are not authorized to refer any point of law to individuals not acting in a public capacity.

Though they may receive law opinions tendered to them by the parties, and, if deemed proper, refer them to their law officers, or those of the superior courts.

Copies of all questions put to the Hindoo and Mahomedan law officers, and of their replies to be furnished to the S. D. A.

290. The Court of Sudder dewanny adawlut being desirous, for the purpose of occasional reference, of being furnished with the futwas and bewustahs that have been delivered by the Mahomedan and Hindoo Law Officers of the several Courts of judicature, in answer to questions on points of law put to them on the trial of civil cases, direct me to request that you will cause copies of all such questions and answers, except in cases which have been appealed to the Sudder dewanny adawlut, to be prepared from the records of your court, from the commencement of the year 1803, to the end of the past year, 1812, and transmit them, when completed, to this court: and you will in like manner, annually furnish copies of the law opinions delivered by your Law Officers on civil cases in each year.—*Cur. Ord. 11th March 1813.*

291. In suits regarding succession, inheritance, marriage, and caste, or other religious usages, or institutions, the Mahomedan laws, with respect to Mahomedans, and the Hindoo laws, with regard to Hindoos, are to be considered as the general rules by which the Judges are to form their decisions. In causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting where Europeans, or other persons, not being either Mahomedans or Hindoos, shall be defendants, in which cases the law of the

By what law the suits herein described are to be decided.

Where parties in suits are of different persuasions, the court is to be guided by the law defendant

Exception

plaintiff is to be made the rule of decision in all plaints and actions of a civil nature. The Mahomedan and Hindoo Law Officers of the courts, are to attend to expound the law of their respective persuasions, in cases, in which recourse may be required to be had to it. —*Reg. 8, 1795, Sect. 3, Cl. 2.* [*This enactment applies to Benares.*]

Cl. 2, sec. 3, reg. 8, 1795, rescinded.

292. Such part of Clause two, Section 3, Regulation 8, 1795, enacted for the province of Benares, which declares that “in causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting where Europeans or other persons not being either Mahomedans or Hindoos shall be defendants, in which case the law of the plaintiff is to be made the rule of decision in all plaints or actions of a civil nature,” is hereby rescinded, and the rule contained in Section 15, Regulation 4, 1793, and the corresponding enactment contained in Clause one, Section 16, Regulation 3, 1803, shall be the rule of guidance in all suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions that may arise between persons professing the Hindoo and Mahomedan persuasions respectively —*Reg. 7, 1832, Sect. 8.*

The rules contained in sec. 15, reg. 4, 1793, and in cl. 1, sec. 16, reg. 3, 1803, when to be observed

Persons to whom those rules are applied

Course to follow in civil suits of different religious persuasions

293. It is hereby declared, however, that the above rules are intended, and shall be held to apply to such persons only as shall be bonâ fide professors of those religions at the time of the application of the law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit may be of different persuasions, when one party shall be of the Hindoo, and the other of the Mahomedan persuasion, or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases, the decision shall be governed by the principles of justice, equity and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English, or any foreign law, or the application to such cases of any rules not sanctioned by those principles.—*Ibid. Sect. 9.*

Cases which are to be decided according to the Hindoo law current in the purgannah in which the family reside

The local position of a family does not necessarily determine the law by which their disputes are to be decided

294. I am directed to inform you that the case adverted to in your letter of the 23d March last should be decided according to the Hindoo law current in the purgannah in which the family reside, provided it accords with the family usage; otherwise the latter must form the rule of guidance. I am also directed to refer you to the cases noted in the margin, as shewing that the local position of a family does not necessarily determine the law by which their disputes ought to be decided.—*Con. 1007, Cal. C. 22d April, West. C. 13th May 1836.*

Rajehundra Narain Chowdry, appellant, *versus* Goolchunder Gop, respondent  
Gunga Dutt Jha, appellant, *versus* Shree Narain Rai and another, respondents

Claim for payment of a deposit against the collector by the heirs of the deceased who had deposited a sum to be invested in promissory notes, disallowed

295. A claim, for repayment of a deposit, against a Collector by the heirs of a party deceased, who had deposited a sum of money as an investment in the public funds, but died before obtaining the promissory note, disallowed, sale of the promissory note and distribution of proceeds among the heirs ordered.—*S. D. A. Sel. Rep. 2d Feb. 1841, vol. 7, p. 13.*

296. Claim by the appellant to certain lands in possession of the respondent, as the claimant's hereditary property. On proof shewing the title of the claimant's father and of the claimant as heir, lands adjudged with mesne profits from a certain date.—*S. D. A. Sel. Rep. 22d June 1807, vol. 1, p. 190.*

Claim by appellant to certain lands in possession of respondent as claimant's hereditary property, adjudged to him with mesne profits.

297. Held on the opinion of the Law Officer of the Sudder dewanny adawlut, that an heir of a deceased Mahomedan is not liable to pay the debts of his father, save *pro tanto* assets to which he may have avowedly succeeded.—*Rep. Sum. Cases, 17th June 1840, p. 34.*

To what extent the heir of a deceased Mahomedan is liable for his father's debts.

298. A. having borrowed money in one district, dies without leaving any property in the district in which he borrowed, and is succeeded by heirs resident in another district. Held that the heirs may be sued either in the *locus contractus*, or in that of their domicile.—*Rep. Sum. Cases, 1st June 1847.*

In what court the heirs of a deceased person, who had borrowed money in one district and died in another, may be sued

299. A claim by adoption having been adjusted between the claimant and the heirs at law of the alleged adoptive father, by a partition of the estate of the latter, such adoption not having been legally proved in court; held that on the death of the claimant, the heirs of the adoptive father should be admitted to represent the adopted party, in a suit instituted against him by another party with reference to the property thus obtained, in preference to his own mother.—*Rep. Sum. Cases, 21st June 1847.*

Decision of the S. D. A. in a particular case of adoption and succession

300. In an action founded on the right by inheritance, for possession of the estate, real and personal, of a party deceased, the lower court gave judgment in regard to the real estate and referred the plaintiff to a separate estate for the personal property. Held by the Sudder dewanny adawlut that the order was irregular in the latter respect, and that the lower court should have decided on the merits of the entire claim.—*S. D. A. Sel. Rep. 10th Feb. 1841, vol. 7, p. 15.*

In an action for the right by inheritance, the court should decide on the merits of the entire claim, as well for the real as the personal estate

301. Can an heir bring to issue his claim to hereditary right in any one zemindary or talook or landed estate, reserving to himself the power of subsequently suing for the portion of any other estate, and in pursuit of claims of inheritance are heirs bound to bring forward their whole claim for both the real and personal effects, or may they sue in the first instance for either one or the other?—I am directed by the Court to communicate to you their opinions that suits founded on the right of inheritance should include the whole claim arising out of the same cause of action.—*Con. 1040, Cal. and West. C. 5th Aug. 1836.*

Suits founded on the right of inheritance should include the whole claim arising out of the same cause of action.

302. A son born after decree made cannot summarily get possession of property adjudged to his brothers and cousins, who were parties thereto, notwithstanding the opinion of the *pundit*, that such after-born son had equality or right of brothers in the ancestral estate of his maternal uncle. But this was held by the Sudder dewanny adawlut not to narrow his remedy by legal recourse to the institution of a regular suit.—*Rep. Sum. Cases, 30th Dec. 1834, p. 3.*

A son born after a decree, cannot summarily obtain possession of property adjudged to his brothers and cousins, but may institute a regular suit.

303. Held that on applications by three distinct parties to represent a deceased decree-holder, (one as the legal heir, and the others on special pleas,) the Zillah court should have recognized the legal heir, leaving the other claimants to resort to regular actions for the establishment of their respective claims.—*Rep. Sum. Cases, 27th Sept. 1836, p. 12.*

The legal heir is to be recognized as representing a deceased decree-holder, other claimants must be referred to a regular suit

304. Right of succession cannot be decided in a summary manner except under Acts XIX. and XX. of 1841, or when the heirs of deceased parties to suits are called upon to appear.—*Rep. Sum. Cases, 22d April 1845, p. 67.*

Cases in which the right of succession may be summarily decided

## SECTION XX.

*Succession to Property by others besides Hindoos and Mahomedans—Bequests.*

Law of inheritance according to Portuguese law.

305. According to the Portuguese law of inheritance, one moiety of the estate of the husband devolves at his death on his widow, and the other moiety on his next of kin. According to this law, a distribution was ordered to be made of the estate of a deceased person; but his wife dying, and several claims to her moiety being preferred, it was subsequently discovered, that the deceased's husband was a British subject. As he left no heirs, [the relations of a mother or of a wife not being heirs to real property, according to English law,] decreed that the estate should revert to Government, by whom it was originally granted to the father of the deceased.—*S. D. A. Sel. Rep. 12th Feb. 1817, vol. 2, p. 227.*

*Idem*

306. Had the case been decided according to the law of Portugal, the decision would have been the same; as by a special law of Portugal, termed the *mental*, and applicable to the case, all grants made by the crown, and sub grants by any great donees of the crown, become escheats, on failure of the legitimate descendants of the original donee, relations not in the direct line being excluded.—*Ibid, p. 230, note.*

Case of an Armenian dying intestate

307. In the case of an Armenian dying intestate, leaving a childless widow and a whole brother, it was held by the Sudder dewanny adawlut, after consulting various Armenian authorities, that the widow was entitled to one-sixth of her husband's estate.—*S. D. A. Sel. Rep. 20th Aug. 1838, vol. 6, p. 238.*

Decision of the S. D. A. in a dispute between two Armenians regarding the right to some property.

308. A decree of the Sudder dewanny adawlut in a suit between two Armenians whereby they and another person then deceased, were declared to have been equally entitled to a certain estate, held to be sufficient evidence of the amount of the said deceased person's share in the estate in a subsequent suit at the instance of a party claiming directly under his will, and alleging him to have been entitled by the Armenian law to the whole.—*S. D. A. Sel. Rep. 30th Nov. 1841, vol. 7, p. 51.*

A deed of compromise held to be binding on an Armenian lady's representatives.

309. A deed of compromise executed by an Armenian lady possessed of two-thirds of an estate both of which had descended to her from her father who held one-third absolutely in his own right, and the other under the will of his grand uncle, which it was alleged had given him only a life interest in that third—held to be binding on the lady's representatives though not claiming in her right but directly under the will, as it appeared that notwithstanding the deed of compromise, they were still left in possession of one full third of the estate, and there was no doubt of her competency to dispose of the other third.—*Ibid.*

Suits regarding inheritance between Armenians should be decided according to the law current among them.

310. Held that according to the practice of the Sudder dewanny adawlut, suits regarding inheritance between Armenians, should be decided according to the exposition of the law current among them, as given by the ecclesiastical authorities of the Armenian church until otherwise provided for by a legislative enactment.—*S. D. A. Sel. Rep. 23th Jan. 1842, vol. 7,*

Decision of a case under the Armenian law.

311. According to the Armenian law, a verbal bequest of *self-acquired* property to an illegitimate son is good, provided there be no legitimate children; but such disposition of patrimonial property is not valid to the exclusion of the legal heirs.—*S. D. A. Sel. Rep. 8th Feb. 1820, vol. 3, p. 9.*

312. But on proof that the illegitimate son, after the death of his father, virtually acknowledged the right of his heirs, by taking out probate, and benefiting by the will of his great uncle, and by entering into a compromise with his great uncle's daughter for her share of the property; the court held that the verbal bequest should not avail.—*S. D. A. Sel. Rep. 8th Feb. 1820, vol. 3, p. 9.* Decision of a case under the Armenian law.

313. By the French law, where the widow had been in a state of community with her intestate husband, she is entitled to a moiety, and his collateral kin to a moiety of his personal estate.—*S. D. A. Sel. Rep. 15th Feb. 1832, vol. 5, p. 176.* French law regarding rights of widows.

314. A., a native of France, died in Patna, leaving, by will, to his brothers B and C, a sum, of which the interest was to be paid to the poor, until they appeared personally and claimed. D., the widow, was made residuary. On a certified declaration of the citizens of the birthplace of A, that B and C had been absent more than 35 years previous to the will, it was ruled that the legacy had lapsed, their death prior to that of the testator being presumed — *S. D. A. Sel. Rep. 15th Feb. 1832, vol. 5, p. 176.* Case of inheritance among natives of France.

315. A., as next of kin to B deceased, had authorized C, to proceed on his part and receive communication of any will. C, on the power of A, sued for a special legacy to D, A's brother, on the ground of his presumed death. A, was nonsuited in the lower courts for defect of kin proved, but the Sudder dewanee adawlut, adverting to the terms of the power, on proof supplied, reversed the decisions of the lower courts and awarded to A, as heir, his share of the legacy, which was treated as intestate property.—*S. D. A. Sel. Rep. 15th Feb. 1832, vol. 5, p. 176.* Idem

316. The plaintiff married in Calcutta a girl of Dutch parentage, at the time of her marriage a ward of the Dutch Orphan Chamber at Chinsurah, but resident in Calcutta; and instituted the present action to recover from the executors of her grandfather's will (written in the Dutch language) a sum of money bequeathed by him to her. Held, that the case must be tried according to the English, and not according to the Dutch law.—*S. D. A. Sel. Rep. 2d Dec. 1813, vol. 7, p. 139.* A Dutch girl, a ward of the Dutch Orphan Chamber at Chinsurah married, and her husband sues for the money left by her grandfather. The case must be decided under English & not Dutch law.

317. A sale made by an administratrix of the real estate of an intestate is not valid, in English law, and the son is entitled to recover possession, subject to a refund to the purchaser of such portion of the purchase money as may be proved to have been expended for the benefit of the heir at law.—*S. D. A. Sel. Rep. 10th July 1827, vol. 4, p. 213.* Decision of the S. D. A. in a case of English law.

318. A, a British subject, acquired land. B, his son, also a British subject, succeeded thereto: on his death his estate, by English law, will descend to his heirs; his wife will be entitled to dower. No relation of his mother, nor even of his wife will succeed thereto as his heir; and in default of his heirs, it will be escheated, subject only to his wife's dower.—*S. D. A. Sel. Rep. 12th Feb. 1817, vol. 2, p. 227.* Idem

319. The parents of an individual being Europeans, he must be considered to be an European, without reference to the place of his birth.—*Con. 397, 29th July 1825.* The place of birth does not deprive one whose parents were Europeans of his claim to be deemed one.

## SECTION XXI.

*Rules for the protection of moveable and immoveable Property against wrongful Possession of Cases of Succession.*

Preamble.

320. Whereas much inconvenience has been experienced, where persons have died possessed of moveable and immoveable property, and the same has been taken upon pretended claims of right by gift or succession; the difficulty of ascertaining the precise nature of the moveable property in such cases, the opportunities for misappropriating such property and also the profits of real property, the delays of a regular suit when vexatiously protracted, and the inability of heirs when out of possession to prosecute their rights, affording strong temptations for the employment of force or fraud in order to obtain possession. And whereas, from the above causes, the circumstance of actual possession, when taken upon a succession, does not afford an indication of rightful title equal to that of a decision by a Judge after hearing all parties in a summary suit, though such summary suit may not be sufficient to prevent a party removed from possession thereby from instituting a regular suit. And whereas such summary suit, though it will take away many of the temptations which exist for assuming wrongful possession upon a succession will be too tardy a remedy for obviating them all especially as regards moveable property. And whereas it may be expedient, prior to the determination of the summary suit, to appoint a Curator to take charge of property upon a succession, where there is reason to apprehend danger of misappropriation, waste or neglect, and where such appointment will, in the opinion of the authority making the same, be beneficial under all the circumstances of the case. And whereas it will be very inconvenient to interfere with successions to estates by the appointment of Curators, or by summary suits, unless satisfactory grounds for such proceedings shall appear, and unless such proceedings shall be required by or on the behalf of parties giving satisfactory proof that they are likely to be materially prejudiced if left to the ordinary remedy of a regular suit.—*Act XIX. 1841, Sect. 1.*

When a person dies leaving property, the person claiming a right to it by succession, may apply to a judge, &c. for relief or assistance, to obtain possession

321. It is hereby enacted, that whenever a person dies leaving property, moveable or immoveable, it shall be lawful for any person claiming a right by succession thereto, or to any portion thereof, to make application to the Judge of the Court of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.—*Ibid.*

Any agent, &c. or near friend, or the court of wards, in the case of an infant, &c. may make like application.

322. And it is hereby enacted, that it shall be lawful for any agent, relative, or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified, or absent person being entitled by succession to such property as aforesaid, to make the like application for relief.—*Ibid., Sect. 2.*

The representative must personally make the solemn declaration required in sec. 3.

323. The representative (whether male or female) of a party under Section 2, Act XIX. of 1841 must personally make the solemn declaration required by the third section of that law.—*Rep. Sum. Cases, 11th Sept. 1847.*

324. And it is hereby enacted, that the Judge to whom such application shall be made shall, in the first place enquire by the solemn declaration of the complainant and by witnesses and documents at his discretion, whether there be strong reasons for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made *bonâ fide*.—*Act XIX. 1841, Sect. 3.*

The judge to whom such application is made shall enquire, &c. whether there is strong ground to believe that the party in possession has no lawful title, and whether applicant is likely to be prejudiced if left to his ordinary remedy

325. Held with reference to the provisions of Section 3, Act XIX. of 1841, (regarding the appointment of Curators for the protection of property against wrongful possession in cases of successions) that the complainant must appear in person to make the solemn declaration thereby required. See *Construction 1319.—Rep. Sum. Cases, 13th April 1842, p. 26.*

The complainant must personally appear and make the solemn declaration

326. And it is hereby enacted, that in case the Judge shall be satisfied of the existence of such strong ground of belief but not otherwise, he shall cite the party complained of, and give notice of vacant or disturbed possession by publication, and after the expiration of a reasonable time shall determine summarily the right to possession (subject to regular suit as hereinafter mentioned) and shall deliver possession accordingly—provided always that the Judge shall have the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the enquiry necessary for citing the party complained of or not.—*Act XIX. 1841, Sect. 4.*

If judge is satisfied that there is such strong ground of belief, he shall cite the party complained of, &c and deliver possession, &c, judge may appoint officer to take inventory, &c

327. And it is hereby enacted, that in case it shall further appear upon such application and examination as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined and that the delay in obtaining security from the party in possession, or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he be the lawful owner; it shall be lawful for the Judge to appoint one or more Curators with the powers hereinafter next mentioned, whose authority shall continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. Provided always that, in the case of land, the Judge may delegate to the Collector or to his officer the powers of a Curator, and also that every appointment of a Curator in respect of any property be duly published.—*Ibid, Sect. 5.*

In case of danger of misappropriation of property before suit can be determined, curators may be appointed, &c.

328. And it is hereby enacted, that the Judge shall have power to authorize such Curator, either to take possession of the property generally, or until security be given by the party in possession, or until inventories of the property shall have been made, or for any other purpose necessary for securing the property from misappropriation or waste by the party in possession. Provided always, that it shall be entirely discretionary with the Judge, whether he shall allow the party in possession to continue in such possession, on giving security, or not, and any continuance in possession shall be subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.—*Ibid, Sect. 6.*

Judge may authorize curator to take possession of property generally or until security be given, &c



Curator to give his security his remuneration not to exceed 6 per centum on personal property and annual rent of real property. Surplus to be paid into court, & invested in public securities

329. And it is hereby enacted, that the Judge shall exact from the Curator security for the faithful discharge of his trust, and for rendering satisfactory accounts of the same as hereinafter mentioned, and may authorize him to receive out of the property such remuneration as shall appear reasonable, but in no case exceeding five per centum on the personal property and on the annual profits of the real property. All surplus monies realized by the Curator shall be paid into court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. Provided always, that although security shall be required from the Curator with all reasonable despatch, and where it is practicable, shall be taken generally to answer all cases for which the person may be afterwards appointed Curator, yet no delay in the taking of security shall prevent the Judge from immediately investing the Curator with the powers of his office.—*Act XIX. 1841. Sect. 7.*

If the estate of deceased consists of lands paying revenue, the Judge shall demand a report from collector, as to the property of the party at possession, &c. but he shall not be obliged to conform to the report of collector, &c.

330. And it is hereby enacted, that, where the estate of the deceased person shall consist wholly or in part of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a Curator, and of nominating individuals to that appointment, the Judge shall demand a report from the Collector, and the Collector is hereby required to furnish the same. In cases of urgency the Judge may proceed, in the first instance, without such report, and he shall not be obliged to act in conformity thereto, but in case of his acting otherwise than according to such report, he shall immediately forward a statement of his reasons to the Court of Sudder dewanny adawlut, and the Court of Sudder dewanny adawlut, if they shall be dissatisfied with such reasons, shall direct the Judge to proceed conformably to the report of the Collector.—*Ibid. Sect. 8.*

Curator to be subject to orders of Judge regarding the institution, &c. of suits. Suits to be instituted, &c. in name of curator

331. And it is hereby enacted, that the Curator shall be subject to all orders of the Judge regarding the institution or the defence of suits, and that all suits may be instituted or defended in the name of the Curator on behalf of the estate. Provided that an express authority shall be requisite in the summons of the Curator's appointment for the collection of debts or rents: but such express authority shall enable the Curator to give a full acquittance for any sums of money received by virtue thereof.—*Ibid. Sect. 9.*

Pending custody by curator, Judge may order allowances to parties having primâ facie right.

332. And it is hereby enacted, that pending the custody of the property by the Curator, it shall be lawful for the Judge to make such allowances to parties having a primâ facie right thereto as upon a summary investigation of the rights and circumstances of the parties interested, he shall consider that necessity may require, taking, at his discretion, security for the repayment thereof with interest, in case the party shall, upon the adjudication of the summary suit, appear not to be entitled thereto.—*Ibid. Sect. 10.*

Curator to file monthly account in abstract, and every 3 months detailed accounts.

333. And it is hereby enacted, that the Curator shall file monthly accounts in abstract, and at the period of every three months, if his administration last so long, and upon giving up the possession of the property file a detailed account of his administration to the satisfaction of the Judge.—*Ibid. Sect. 11.*

334. And it is hereby enacted, that the accounts of any such Curator as is above described shall be open to the inspection of all parties interested; and it shall be competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such Curator. And if it be found that the accounts of any such Curator are in arrear, or if they shall be erroneous or incomplete, or if the Curator shall not produce them whenever he shall be ordered to do so by the Judge, he shall be liable to a fine not exceeding one thousand rupees for every such default.—*Act XLX. 1841, Sect. 12.*

Accounts of curator to be open to inspection of parties interested. Party interested may appoint person to keep a duplicate of curator's accounts.

335. And it is hereby enacted, that after the Judge of any district shall have appointed any Curator, such appointment shall preclude the Judge of any other district within the same Presidency from appointing any other Curator, provided the first appointment be in respect of the whole of the property of the deceased. But if the appointment be only in respect of a portion of the property of the deceased, this shall not preclude the appointment within the same Presidency of another Curator in respect of the residue or any portion thereof; provided always, that no Judge shall appoint a Curator or entertain a summary suit in respect of property which is the subject of a summary suit previously instituted under this Act before another Judge—and provided further, that if two or more Curators be appointed by different Judges for several parts of an estate, it shall be lawful for the Sudder dewanny adawlat to make such order as it shall think fit for the appointment of one Curator of the whole property.—*Ibid, Sect. 13.*

After appointment of curator, no second shall be appointed in respect of same property. Where several curators are appointed in respect of several parts of estate, the S. D. A. may make order for appointment of one curator for the whole.

336. And it is hereby provided, that this Act shall not be put in force, unless the afore-said application to the Judge be made within six months of the decease of the proprietor, whose property is claimed by right in succession.—*Ibid, Sect. 14*

The provisions of this act not to be put in force, unless application be made within 6 months after decease

337. And it is hereby enacted, that this Act shall not be put in force to contravene any public act of settlement. Neither in cases in which the deceased proprietor shall have given legal directions for the possession of his property after his decease in the event of minority or otherwise, in opposition to such directions, but, in every such case, so soon as the Judge having jurisdiction over the property of a deceased person, shall be satisfied of the existence of such directions, he shall give effect thereto.—*Ibid, Sect. 15.*

This act not to be applied in contravention of any public act of settlement, nor where deceased proprietor has left directions respecting the possession of his property.

338. And it is hereby provided, that this Act shall not be put in force, for the purpose of disturbing the possession of the Court of Wards of any Presidency; and in case a minor, or other disqualified person whose property shall be subject to the Court of Wards, shall be the party on whose behalf application is made under this Act, the Judge if he determines to cite the party in possession and also to appoint a Curator, shall invest the Court of Wards with the Curatorship of the estate pending the suit without taking such security as aforesaid, and in case the minor or other disqualified person shall, upon the adjudication of the summary suits appear to be entitled to the property, possession shall be delivered to the Court of Wards.—*Ibid, Sect. 16.*

Possession of court of wards not to be disturbed under this act. In case of minors and other disqualified persons, the court of wards to be invested with curatorship of estate, pending suit, &c.

339. And it is hereby provided, that nothing in this Act contained shall be any impediment to the bringing of regular suit either by the party whose application may

Nothing in this act or done under it, shall prevent the institution of a regular suit.

have been rejected, before or after citing the party in possession, or by the party who may have been evicted from the possession under this Act.—*Act XIX. 1841, Sect. 17.*

The decision in summary suits under this act shall have no other effect than that of settling the actual possession, for which purpose it shall be final.

The S. D. A., however, reversed the illegal order of a judge under the above section.

340. And it is hereby enacted, that the decision of the Judge upon the summary suit under this Act shall have no other effect than that of settling the actual possession; but that for this purpose it shall be final, not subject to any appeal or order for review.—*Ibid, Sect. 18.*

341. The Sudder dewanny adawlut reversed the illegal order of a zillah Judge in a case in which his legal order would have been final and not subject to appeal.—*Rep. Sum. Cases, 1st Sept. 1846, p. 83.*

The governments of the different presidencies may appoint public curators for any district. The Judge shall nominate such public curator when the choice is left with him.

342. And it is hereby enacted, that it shall be lawful for the Governments of the respective Presidencies to appoint public Curators for any district or number of districts. And the Judge having jurisdiction shall nominate such public Curator or Curators in all cases where the choice of a Curator is left discretionary with him under the preceding provisions of this Act.—*Act XIX. 1841, Sect. 19.*

If person dies leaving property within local limits of Supreme Court, and such court shall be satisfied that danger of misappropriation, &c. of property is to be apprehended, the court may authorize the ecclesiastical registrar, or one or more curators to collect the effects, &c. and to hold or deposit the same, &c.

343. And it is hereby enacted, that whenever a person dies leaving moveable or immoveable property within the local limits of the jurisdiction of any of Her Majesty's Supreme Courts, and such court shall be satisfied that danger is to be apprehended of the misappropriation and waste of the property before it can be ascertained who may be legally entitled to the succession to such property, it shall be lawful for the said court to authorize and enjoin the Ecclesiastical Registrar, or one or more Curators to collect such effects and hold or deposit or invest the same in such manner and place, and upon such security and subject to such orders and directions, as the court may deem expedient.—*Ibid, Sect. 20.*

Forms for use in cases under act 19, 1841.

344. The Court are pleased to prescribe the subjoined forms for use in cases under Act XIX. 1841.—

Form of engagement of curator.

#### FORM OF ENGAGEMENT OF CURATOR.

I, A. B., having been appointed by the Judge of zillah ———, under the provisions of Act XIX. of 1841, to take temporary possession of the property of the late C. D., do hereby solemnly promise and engage diligently and faithfully to discharge the trust committed to me, and to act in every respect according to the instructions given me, and to the best of my judgment for the interest of the proprietors. I also promise to obey all orders of the Judge, regarding the institution or the defence of suits, concerning or connected with the property committed to my charge. I further promise and engage to give acquittances for all sums of money collected by me, as debts or rents on account of the estate of the said C. D., and to render a true and just account for whatever may be received by me on account of the said estate, filing at the earliest practicable period an inventory of the property received by me, and also monthly in the Judge's office accounts in abstract, and at the end of every three months, and on giving up possession of the property, accounts in detail of my administration of the said property. I further promise and engage to adhere strictly to such laws as may be passed for the guidance of Curators by the Governor General in Council, and to such orders as I may receive from the Judge, and to derive no personal advantage whatever, directly or

indirectly, from the trust committed to me beyond the allowance granted to me as stated in my sunnud of appointment.

A. B.

#### FORM OF SECURITY BOND.

Form of security  
bond.

Whereas A. B. has been appointed by the Judge of zillah — ———, under the provisions of Act XIX. of 1841, to take possession of the property of C. D., deceased: I, E. F., do hereby engage and bind myself to stand security, and to be answerable for the faithful discharge of his trust by the said A. B. agreeably to the terms of his sunnud of appointment, a copy of which has been duly delivered to me. I also bind myself, my heirs, and successors, not to sell, give, or otherwise transfer or dispose of the property mentioned in the annexed schedule, which I hereby pledge for the purposes of this engagement, until the conditions thereof have been completely fulfilled.

E. F.

Schedule of property (to follow here.)

#### FORM OF SUNNUD.

Form of sunnud

*Sunnud to A. B.*

Whereas you, A. B., have been appointed under the provisions of Act XIX. of 1841, to take temporary possession of the property of the late C. D., you shall diligently and faithfully discharge the trust committed to you, and act in every respect according to the instructions given you, and to the best of your judgment for the interest of the proprietors; you shall obey all orders of the Judge regarding the institution or the defence of suits, concerning or connected with the property committed to your charge; you shall further receive payment of debts and rents due to the estate of the said C. D. until otherwise ordered, such power of collecting debts, however, to cease on the granting of a certificate under the provisions of Act XX. of 1841, or in the event of a probate or letters of administration to the estate of the said C. D. being granted by Her Majesty's Supreme Court of Judicature; and you shall give acquittances for all sums of money collected by you, as debts or rents, on account of the estate of the said C. D., and you shall render a true and just account of whatever may be received by you on account of the said estate, filing at as early a period as practicable an inventory of the property received by you, and also monthly in the Judge's office accounts in abstract, and at the end of every three months, and on giving up possession of the property, accounts in detail of your administration of the said property. You shall further adhere strictly to such laws as may be passed for the guidance of Curators by the Governor General in Council, and to such orders as you may receive from the Judge, and you shall derive no personal advantage whatever, directly or indirectly, from the trust committed to you, beyond the allowance hereby granted to you of five per centum on the personal property and on the annual profits of the real property placed under your charge; and you shall exercise the power of Curator under the sunnud until the determination of the summary suit now pending respecting the right to possession of the said property, or until otherwise ordered by this court.

Schedule of property under the Curator (to follow here.)

## SECTION XXII.

*Rules for facilitating the Collection of Debts on Successions, and for the security of Parties paying Debts to the Representatives of deceased Persons.*

Preamble

345. Whereas it is expedient to provide greater security for persons paying to the representatives of deceased Hindoos, Mahomedans, and others not usually designated as British subjects, debts which are payable in respect of the estates of such deceased persons, and to facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same.—*Act XX. 1811, Sect. 1.*

The certificate does not refer to applications for succession to property.

346. The certificate under Act XX. of 1811, is granted specially for facilitating the collection of debts on succession, and does not refer to applications for succession to property.—*Rep. Sum. Cases, 5th July 1817.*

No debtor of any deceased person shall be compelled to pay, except on production of certificate, &c. or probate, &c. unless court shall be of opinion that payment is withheld fraudulently, &c.

347. It is hereby enacted, that no debtor of any deceased person shall be compelled in any court of law to pay his debt to any person claiming to be entitled to the effects of any deceased person, or any part thereof, except on the production of a certificate to be obtained in manner hereinafter mentioned, or of a probate or letters of administration, unless the court shall be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.—*Act XX. 1811, Sect. 1.*

The Zillah or district court within whose jurisdiction property of deceased is found, may grant certificate under this act upon petition setting forth title of claimant, and judge to issue notice and fix a day for hearing, &c.

348. And it is hereby enacted, that the Zillah or District court within the jurisdiction of which any part of the property of the deceased may be found shall have authority to grant a certificate under this Act. The applicant in his petition shall set forth his title. The Judge shall issue notice of application, inviting claimants, and fixing a day for hearing the petition, and upon the appointed day, or as soon after as may be convenient shall determine the right to the certificate, and grant the same accordingly.—*Ibid. Sect. 2.*

Stamped paper on which petitions for certificates must be engrossed.

349. The following questions having been submitted by the Judge of Delhi:—1st. Whether the petition for a certificate under Act XX. of 1811, should be on stamped paper, and of what value?—It was held, that under Section 2 of the Act, petitions for certificates are required to be presented to the Judge of the Zillah or District court, and ought consequently to be engrossed on a stamp of the value prescribed in the seventh article of Schedule B, Regulation 10, 1829—*Con. 1316, West. C. 14th Jan., Cal. C. 11th Feb. 1824, par. 1.*

Language in which the petitions should be written

350. Whether the petition for a certificate may be written either in the English or Oordoo language?—It was held that the petition should be couched in the official language prescribed by the legislature, that is, the vernacular, that objectors who in the majority of cases will be those who are best acquainted with that language, may know the nature of the appellant's claim in order to answer it. Parties, however, may, if they please, accompany such petition with an English translation.—*Ibid, par. 2.*

351. Whether the certificate should be issued on stamped paper?—It was held that neither in Act XX. 1841, nor in any other law, is it provided directly or constructively that certificates of representation shall be written on stamped, they should therefore be granted on plain paper.—*Con. 1316, West. C. 14th Jan., Cal. C. 11th Feb. 1842, par. 3.*

The certificate itself need not be on stamped paper.

352. And it is hereby enacted, that the certificate of the district or zillah Judge shall be conclusive of the representative title against all debtors to the deceased, and shall afford full indemnity to all debtors paying their debts to the person in whose favour the certificate has been granted.—*Act XX. 1841, Sect. 3.*

The certificate of judge shall be conclusive of the representative title against all debtors of deceased, and shall be a sufficient warrant for them to pay their debts.

353. And it is hereby enacted, that the district or zillah Judge may take such security as he shall think necessary from any person to whom he shall grant a certificate for rendering an account of debts received by him, and for indemnity of persons who may be entitled to the whole or any part of the monies received by virtue of such certificate, whose right to recover the same by regular suit against the holder of the certificate is not affected by this Act.—*Ibid, Sect. 4.*

Judge may take security from person to whom he grants certificate for rendering an account & for indemnity of persons entitled.

354. And it is hereby enacted, that the granting of such certificate may be suspended by an appeal to the Court of Sadder dewanny adawlut, which court may declare the party to whom the certificate shall be granted, or may direct such further proceedings for the investigation of the title as it shall think fit. The court may also upon petition, after a certificate shall have been granted by the district or zillah Judge, grant a fresh certificate in supersession of the certificate granted by the district or zillah Judge, and such fresh certificate shall not affect any payments made to the person to whom any former certificate may have been granted without notice that the same has been superseded, but shall entitle the person named therein to receive all monies that may have been recovered under the first certificate from the person to whom the same may have been granted.—*Ibid, Sect. 5.*

The grant of certificate may be suspended by appeal to S. D. A., which court may direct to whom certificate shall be granted, &c. and may supersede certificate already granted, and grant fresh certificate.

355. And it is hereby enacted, that every certificate shall give authority to the person to whom the same is granted throughout the Presidency within which the same is granted, and no certificate subsequently granted in respect of the same property shall be valid or effectual, except as hereinafter mentioned.—*Ibid, Sect. 6.*

Certificate to give authority throughout the presidency.

356. And it is hereby enacted, that a person certified as aforesaid, may be empowered to receive interest on Government notes and dividends, or on shares of any bank or parts thereof, and to negotiate such securities. He may be also empowered to receive a share of such interest or dividends or to negotiate a share of such securities. But these powers shall only arise by express words in the certificate.—*Ibid, Sect. 7.*

Person having certificate may be authorized by the terms of the certificate to receive interest on government notes.

357. And it is hereby enacted, that where a certificate shall have been granted in cases in which such certificate would be valid, but for the previous grant of a certificate, all payments made to the person, holding the later certificate in ignorance of the grant of the previous certificate shall be held good against claims under such previous certificate.—*Ibid, Sect. 8.*

Payments bona fide made to the holder of certificate, which is invalid by reason of prior certificate, shall be good against claimant under the elder certificate.

Certificate in respect of property of Hindoos, Mahomedans and others not usually called British subjects, not valid if made after probate or letters of administration, &c.

358. And it is hereby enacted, with regard to the property of deceased Hindoos, Mahomedans and other persons not usually designated by the term British subjects, that no certificate in respect of any such property shall be valid, if made after a probate or letters of administration granted in respect of the same, provided assets belonging to the deceased were at the time of his death within the local jurisdiction of the court granting the probate or letters of administration.—*Act XX. 1841, Sect. 9.*

But payments made to holder of certificate in ignorance of previous probate, &c. to be good against persons claiming under probate.

359. And it is hereby provided, that where a certificate shall have been granted in cases in which such certificate would be valid, but for a probate or letters of administration previously granted, all payments made to the person holding the certificate in ignorance of the previous granting of the probate or letters of administration, shall be held good against claims under the probate or letters of administration so previously granted.—*Ibid, Sect. 10.*

No probate, &c. valid after grant of certificate, &c.

360. And it is hereby enacted that no probate or letters of administration shall be valid for the purpose of the recovery of debts, or for the security of debtors, after a certificate granted in respect of this same property for which such probate or letters of administration shall have been granted, provided assets belonging to the deceased were at the time of his death within the jurisdiction of the court granting such certificate.—*Ibid, Sect. 11.*

But payments made to holder of probate to be valid against claims under certificate.

361. And it is hereby provided, that where probate or letters of administration may have been granted, in cases in which probate or letters of administration would be valid, but for the previous grant of a certificate, all payments made in ignorance of the previous grant of the certificate shall be held good against claims under such previous certificate.—*Ibid, Sect. 12.*

Curators appointed under Act 19, 1811, not to exercise any powers which but for that Act would belong to holders of certificate under this Act. But payments to curators shall be good, and curators responsible to holder of certificate.

362. And whereas under Act XIX. of 1811, Curators may be invested with certain powers which are conferred on persons obtaining certificates under this Act, and which belong to executors and administrators, it is hereby enacted that Curators appointed under the said Act shall not exercise any powers which, but for that Act, would lawfully belong to such persons obtaining certificates, executors or administrators, where a certificate, probate or letters of administration have been actually obtained, but all persons who may have paid debts or rents to a Curator authorized by a Judge to receive the same shall be indemnified, and the Curator shall be responsible for the payment of the same to the person who has obtained a certificate, the executor, or administrator, as the case may be.—*Ibid, Sect. 13.*

All probates, &c. granted by H. M.'s Courts, in cases in which assets were within the local jurisdiction of such Courts shall have the effect of probate, &c. granted in respect of British subjects, for the purpose of recovering debts only, &c. except as in this Act provided.

363. And it is hereby declared and enacted, that all probates and letters of administration granted by any of Her Majesty's Courts in cases in which any assets belonging to deceased persons were, at the time of their deaths, within the local jurisdiction of the court granting the probate or letters of administration, shall have the effect of probate and letters of administration granted in respect of the property of British subjects but for the purpose of the recovery of debts only, and the security of debtors paying the same : except so far as is in this Act provided.—*Ibid, Sect. 14.*

364. And it is hereby provided that nothing in this Act contained shall be held to extend to the property of any person usually designated as a British subject.—*Act XX. 1841, Sect. 15.* This act not to extend to persons usually designated as British subjects.

365. The Court are pleased to direct that the annexed forms be made use of in cases coming under the provisions of Act XX. 1841: Forms to be used under the provisions of act 20, 1841.

FORM OF ENGAGEMENT OF PARTY TO WHOM A CERTIFICATE IS GRANTED FOR COLLECTION OF DEBTS ON SUCCESSION. Form of engagement of party to whom a certificate is granted for collection of debts on succession

Whereas a certificate has been granted to me by the Judge of zillah ———, under the provisions of Act XX. of 1841, to collect the debts due to the estate of the late C. D., I promise and engage to give acquittances for all sums of money collected by me as debts on account of the estate of the late C. D. I further promise and engage to adhere strictly to such laws as have been or may be passed by the Governor General in Council for the guidance of persons holding certificates for the collection of debts due to the estates of deceased persons.

A. B.

#### FORM OF SECURITY BOND.

Whereas a certificate has been granted to A. B., by the Judge of zillah ———, under the provisions of Act XX. of 1841, to collect the debts due to the estate of the late C. D., I hereby engage and bind myself to stand security for the said A. B. and to be answerable for any sums realized by him under the certificate granted to him, which may legally be demandable from him under the provisions of Act XX. of 1841. I further bind myself, my heirs and successors, not to sell, give, or otherwise transfer or dispose of the property mentioned in the annexed schedule, which I hereby pledge for the purposes of this engagement, until the conditions thereof have been completely fulfilled.

Form of security bond

J. F.

Schedule of property (to follow here.)

#### FORM OF CERTIFICATE.

To A. B.

Form of certificate

Whereas, in pursuance of the orders of this Court, dated the ———, in the matter of the estate of the late C. D., this certificate is granted to you agreeably to the provisions of Act XX. of 1841. You are hereby authorized and empowered to collect all debts due to the estate of the said C. D., giving acquittances for all sums received by you.

“ You are further empowered to receive interest on Government notes and dividends, or on shares of any bank or parts thereof belonging to the said estate, and to negotiate such securities. You are also empowered to receive a share of such interest or dividends that may be due to the said estate, or to negotiate a share of such securities.”\*

“ You shall further adhere strictly to such laws as have been or may be passed by the Governor General in Council for the guidance of persons holding certificates for the collection of debts due to the estates of deceased persons.

L. S.

———, Judge

—*Cir. Ord 11th Feb. 1842.*

\* This clause is to be omitted when such power is not intended to be conferred



A will of which probate has been granted by the supreme court, can only be set aside by it

366. A will, probate of which has been granted by the Supreme Court, can only be set aside by the Supreme Court.—*Rep. Sum. Cases, 16th Jan. 1844, p. 55.*

Letters of administration from the supreme court confer no title to summary and from the zillah courts

367. Letters of administration from the Supreme Court confer no title to summary aid from the Zillah courts, in recovering property not in possession of the party represented, at the time of his decease.—*Rep. Sum. Cases, 7th Sept. 1844, p. 61.*

Right of succession can be decided summarily only by acts 19 and 20 of 1841

368. Right of succession cannot be decided in a summary manner, except under Acts XIX. and XX. of 1841, or when the heirs of deceased parties to suits are called upon to appear.—*Rep. Sum. Cases, 22d April 1845, p. 67.*

### SECTION XXIII.

#### *Lunatics.*

Civil courts cannot interfere with the estates of lunatics.

369. The estate of a lunatic being restricted to personal property, there is no law which authorizes the intervention of the Civil courts.—*Con. 1311, West. C. 15th Oct. Cal. C. 5th Nov. 1841.*

### SECTION XXIV

#### *Personal Actions and Accounts*

Where acquaintances were granted conditionally, and the condition was not fulfilled, they were not admitted to defeat a claim

370. Claims by plaintiff, to recover a sum of money due by the defendant on a balance of account resisted by the defendant, who sets up acquaintances in full, executed in his favour by the plaintiff. It appearing in evidence, that these acquaintances were granted conditionally, and that the condition had not been fulfilled, judgment in favour of the plaintiff for the amount proved to be due to him, with interest.—*S. D. A. Sel. Rep. 10th Sept. 1811, vol. 1, p. 313.*

Disputed accounts referred to one skilled in mercantile business.

371. In a case of disputed accounts, between two European shopkeepers, the Court referred the proceedings to a gentleman skilled in mercantile business, and passed a decree on the basis of his report.—*S. D. A. Sel. Rep. 26th Nov. 1821, vol. 3, p. 117.*

A suit against two persons for certain outstanding balances dismissed. On appeal, one of them liquidates his share, but this is deemed no proof of the liability of the other.

372. A. and B. file a suit in the Zillah court against C. and D., for the recovery of certain outstanding balances, which is dismissed with costs. On appeal to the Provincial court C acknowledges and liquidates his share of the balance sued, but the Provincial court confirms the decree of the zillah Judge, holding that the acknowledgment given by C. cannot be looked upon as proof of liability on the part of D. On special appeal by A. and B. the Sudder dewanny adawlut affirmed the decrees already passed.—*S. D. A. Sel. Rep. 11th Aug. 1835, vol. 6, p. 38.*

Case of embezzlement dismissed for want of proof.

373. Claim for a sum of money alleged to have been embezzled by the ancestor of the respondent, from the ancestor of the appellant, dismissed, the alleged embezzlement being disproved.—*S. D. A. Sel. Rep. 24th April 1807, vol. 1, p. 183.*

Where no illegal detention, or want of care, was proved, a suit for damages on the loss of property, dismissed.

374. In a suit to recover 10,000 rupees as damages for the loss of manna appertaining to the plaintiff, which perished from the effect of damp in consequence of being forcibly detained in the warehouse of the defendant; no illegal detention or want of care being proved, the suit was dismissed in all the courts.—*S. D. A. Sel. Rep. 5th April 1810, vol. 1, p. 300.*

Decision of S D A in a suit for the recovery of freight.

375. A. [the owner of a ship] drew a bill of exchange, in favor of his agents and creditors on B. [the freighter,] payable on the discharge of the ship on her return to port. The obliga-

tion was voided by the loss of the ship ; but the house of agency, in whose favor the bill was drawn, had insured freight equal to its amount. In a suit by A. against B. for the recovery of freight, which accrued while the ship was in the employ of B., held that B. cannot plead as part payment the sum received by the creditors of A. on account of the insurance policy.—*S. D. A. Sel. Rep.* 20th June 1812, vol. 2, p. 15.

376. A. having by mistake sold to B. a promissory note for 2000 rupees, instead of one for 500 rupees, sued him to recover the difference between the two notes. B. having sold the note to C., his agent, pleads ignorance of the mistake. It being proved that A. had no dealings with C., judgment given against B., leaving him the option of suing C. for the recovery of the difference.—*S. D. A. Sel. Rep.* 30th Nov. 1818, vol. 2, p. 281. Decision of S. D. A. where A. had by mistake sold B. a promissory note for 2000, instead of one for 500

377. Punishment for a misdemeanor, as for instance desertion from a ship with a boat, does not bar the civil remedy of the owner, and those concerned in the act, are jointly and severally liable.—*S. D. A. Sel. Rep.* 6th Jan. 1830, vol. 5, p. 1. Punishment for a misdemeanor does not bar a civil action for damages

378. The plaintiff sued for the recovery of a specific sum of money conditionally agreed to be paid by a party to an appeal to the Privy Council, to a house of agency in Calcutta, for their trouble and expences in carrying on the appeal, the condition being that the sum should be paid if the party was successful ; judgment in favor of the plaintiff, on proof of the fulfilment of the conditions. An objection raised by the defendant, that the assignment of the conditional order by the house of agency, to the present plaintiff, was unauthorized and illegal, overruled as invalid.—*S. D. A. Sel. Rep.* 27th Feb. 1838, vol. 6, p. 222. Where a specific sum was agreed to be paid by a party in an appeal to the privy council, if it was successful, S. D. A. decreed the payment of the sum, on proof of success of the suit.

379. Suits for recovery of money, on a balance of account opened with the plaintiff by the defendant through a gomastah. The defendant denied the amount. The court remanded for further investigation, and observed on the Principal Sudder Ameen's proceeding, in converting a defendant into a witness, and his directing the parties how to proceed in the case, such being in contravention of Circular order, 13th September, 1813.—*S. D. A. Sel. Rep.* 8th Feb. 1844, vol. 7, p. 155. Suits for recovery of money on a balance of account remanded for re-investigation

380. A case was remanded, because a claim to a set off in account, instead of being entered into had been rejected as rather the subject of a fresh suit.—*Rep. Reg. Cases*, 15th May 1817. A case remanded, because a claim to a set off in account had been rejected.

## SECTION XXV

### *Agents*

381. A *bye-bil-wufa* sale of land, by an agent on the part of the owner, declared void in Mahomedan law, from the agent having exceeded his powers ; from the sale being at gross inadequacy of price ; and from presumption of collusion between the buyer and agent.—*S. D. A. Sel. Rep.* 30th Sept. 1801, vol. 1, p. 55. Reasons for rejecting a *bye-bil wufa* sale of land by an agent on the part of the owner

382. An engagement, having been written without the knowledge and consent of a female, on a signed blank, entrusted by her to her agents for another person, pronounced to be an invalid instrument.—*S. D. A. Sel. Rep.* 30th Oct. 1805, vol. 1, p. 110. An engagement written without the knowledge of a female on a signed blank, entrusted to an agent, pronounced invalid.

Claim to lands purchased by an agent on account of a principal, decreed.

383. Claim to possession of lands by A. as having been purchased by B., as her agent, with her money and on her behalf, decreed on proof of the fact.\*—*S. D. A. Sel. Rep. 2d May 1806, vol. 1, p. 132.*

Two professional agents made responsible for articles sold by them on credit to a person who had become insolvent

384. Two persons, by profession agents and brokers, made responsible for the article sold by them on credit to a person who had become insolvent. Judgment founded on presumptive proof of their having made themselves responsible, chiefly arising from their having charged a rate of commission at which responsibility is usually and ought to have been undertaken.—*S. D. A. Sel. Rep. 1st Aug. 1806, vol. 1, p. 119.*

Where there was presumptive proof that lands had been bought by B on his own account and not as the agent of A, the claim of the latter dismissed.

385. Claim by A on B, for lands bought at public sale by the late husband of B., on the alleged ground that he bought them as agent on the part of A. This not being established, and it appearing, from presumptive proof, that the purchase was made by the husband of B. on his own account, judgment passed dismissing the claim.—*S. D. A. Sel. Rep. 12th April 1808 vol. 1, p. 231.*

A pottah granted by the agent of a jaggeedar, without his consent, set aside.

386. A pottah set aside on proof that it was obtained from the agent of a jaggeedar without his consent.—*S. D. A. Sel. Rep. 13th June 1808, vol. 1 p. 234.*

Decision of S. D. A. in a case in which A sued B for lands alleged to be purchased by the latter as the agent of the former.

387. A sues B, for lands, alleging that he purchased them at auction through the agency of B, in B's name, that a conveyance was afterwards executed to him by B., but that B. had since fraudulently denied his title, and retained the property. The alleged conveyance not being established judgment was passed dismissing the suit, it being held that there was no other ground on which to sustain it, because, even supposing the plaintiff to have been the real purchaser at auction in the name of the defendant, such purchase being expressly prohibited by the Regulations, could not form a legal ground of action, or authorize the courts to interfere on his behalf.—*S. D. A. Sel. Rep. 21st Sept. 1809, vol. 1, p. 289.*

Judgment in a suit brought on the part of appellants by one not duly authorized by them does not bar their right of action

388. Judgment in a suit brought on behalf of appellants by one not duly authorized on their behalf, held not to bar appellants' right of action.—*S. D. A. Sel. Rep. 12th May 1812 vol. 2, p. 11*

## SECTION XXVI

### Annuities

Decision of S. D. A. regarding an annuity granted by the zemindar of Nudda to his youngest son

389. An annuity granted by the zemindar of Nudda to his younger sons on a declaration of the zemindary to his eldest son and made payable from the *moshakura*, or proprietary allowance received from Government, while the zemindary was under the management of the public officers, adjudged to be demandable from the possessor of the zemindary who without the consent of the annuitants, relinquished the *moshakura*, and took on himself the management of the zemindary, with the consequent responsibility for the revenue assessed upon it. The annuity not liable to reduction on account of the public sale of parts of the zemindary under such circumstances; and as the right of the annuitants had been twice adjudged, and appeals were preferred merely to protract the period of payment, the Zillah court

\* The attinee procured by the defendant (and appellant,) who privately added to his signature a short declaration of the invalidity of the document, did not avail against the evidence of his acknowledgement. His signature to the document was taken, by all the parties, in the sense in which it was understood by the other party and witnesses, and in which he gave it to be understood, at the time of his affixing it.—*Note by the S. D. A. to the above*

was ordered to enforce the punctual payment of the annuity in future, by a sale of lands, if necessary.—*S. D. A. Sel. Rep. 9th May 1805, vol. 1, p. 133.*

390. A. has an annuity payable out of B.'s estate; in a dispute respecting the rate, B. enters into an engagement to pay A. the same sum annually as may be decreed by the court to other annuitants under similar circumstances; engagement held to be binding on B. from the date of execution, but not to have reference to previous balances; the engagement not containing any retrospective provision.—*S. D. A. Sel. Rep. 26th May 1813, vol. 2, p. 62.*

Decision of S. D. A. in a dispute regarding the payment of an annuity out of an estate.

391. A judicial order for the payment of a monthly stipend to a certain individual is not held to entitle his heirs to claim it after his death.—*S. D. A. Sel. Rep. 20th Jan. 1822, vol. 3, p. 134.*

A judicial order for the payment of a monthly stipend to a certain individual, does not entitle his heirs to claim it.

392. The gift of an annuity, made by a zemindar during his lifetime, to a younger son, in lieu of his share of a zemindary, held to be hereditary.—*S. D. A. Sel. Rep. 29th Jan. 1829, vol. 4, p. 328.*

The gift of an annuity to a younger son, in lieu of his share of the zemindary, declared hereditary.

393. An undertaking to pay a creditor and assignee of an annuitant, a portion of his pension, imports no liability beyond the life of the annuitant.—*S. D. A. Sel. Rep. 14th June 1830, vol. 5, p. 37.*

An undertaking to pay a creditor and assignee of an annuitant a portion of his pension, ceases with the life of the annuitant.

## SECTION XXVII.

### *Banking Establishments and Partnerships.*

394. Claim of appellant on respondent for 7158 rupees, balance of account, dismissed; respondent having apparently acted as *gomashdah* of a banker, and not being personally responsible.—*S. D. A. Sel. Rep. 15th July 1805, vol. 1, p. 97.*

Claim on the *gomashdah* of a bank, dismissed, as he was not personally responsible.

395. An acquittance given by a managing partner for the amount of a bill of exchange granted by him on credit, and paid by the house on which it was drawn, held sufficient as no collusion appeared.—*S. D. A. Sel. Rep. 12th Sept. 1805, vol. 1, p. 104.*

An acquittance by the managing partner of a house, held to be valid.

396. On a claim by A. against B. and his brother C, as late partners of a banking house, for the amount of a debt due by the house, a deed dissolving the partnership, pleaded by B., adjudged collusive, it being dated only six months before the failure, and not allowed to exonerate him.—*S. D. A. Sel. Rep. 29th June 1807, vol. 1, p. 193.*

Where a claim is set up against B. and C. as late partners in a banking concern, a deed dissolving partnership, dated six months before the failure, not allowed to exonerate them.

397. A deposit of money delivered to the head *gomashdah* of a banking house, who also had a distinct house in his own name and that of his son, declared not recoverable from the principals of the house to which the receiver was *gomashdah*, though the latter gave a receipt for the money as *gomashdah mooktarkar*, it appearing from the evidence that the money had been received and used by the *gomashdah* on his own account, subject to an interest of half *per cent. per mensem*, and there being no proof that the money was deposited on the credit of the bankers, to whom the receiver was agent.—*S. D. A. Sel. Rep. 24th July 1807, vol. 1, p. 204.*

Case in which money deposited with the head *gomashdah* of a banking house was declared not to be recoverable from the principals.

398. Action to recover profits of a partnership in trade entered into without any written agreement. Decree in favor of plaintiff on proof of partnership. According to Hindoo law, although it is unlawful for bramins to traffic in wine, yet on closing their accounts they are en-

Where partnership was proved without any written agreement, an action to recover profits was decreed.

titled to their respective share of the profits of such traffic.—*S. D. A. Sel. Rep. 15th July 1825, vol. 4, p. 84.*

A claim to recover sums lent from the funds of a banking house on a bond given to the head *gomashtah*, allowed.

399. The principal of a banking house sues to recover a sum lent from the funds of the house, on a bond in favor of the head *gomashtah*—claim adjudged.—*S. D. A. Sel. Rep. 28th Feb. 1818, vol. 2, p. 253.*

The partners of a banking house responsible for an undertaking executed in their name by the managing partner.

400. The partners of a banking house held conjointly responsible for an undertaking executed in their names by the managing partner.—*S. D. A. Sel. Rep. 6th Jan. 1820, vol. 3, p. 1.*

Claim by bankers for balance of cash account awarded on the bankers' books, tho' there were no vouchers

401. Where no grounds of distrust were apparent, the claim by bankers, for balance of cash account, was awarded on the bankers' books, [to the accuracy of which the *gomashtah* of the firm had deposited,] the defect of vouchers of payment notwithstanding.—*S. D. A. Sel. Rep. 21st Dec. 1831, vol. 5, p. 151.*

How a suit between partners in a banking house should be laid

402. Held that a suit between partners in a banking concern should be laid for general adjustment of accounts and not for particular items.—*S. D. A. Sel. Rep. 17th July 1811, vol. 7, p. 177.*

\* An action for the recovery of 42,000 rs. on a deed of partnership, nearly 12 years after the date of the transaction, dismissed.

403. An action for recovery of 12,000 rupees, principal and interest on a *sharakatnamah*, or deed of partnership, in which it was stated that the sum of 21,000 rupees was paid by defendant to plaintiff but which the plaintiff now asserted he never received. The court held under the circumstances, that after the lapse of nearly twelve years from the time of the transaction to the institution of the suit, the plaintiff was not entitled to put the defendant on his proof of the actual payment of the sum, and dismissed the claim *in toto*.—*S. D. A. Sel. Rep. 19th Jan. 1814, vol. 7 p. 152.*

## SECTION XXVIII

### *Bills of Exchange*

Claim of respondent for the amount of a bill of exchange given on credit to the appellant, dis-

404. Claim of respondent for the amount of a bill of exchange or *hoondie* given on credit to the appellant. The parties who granted the bill, having given an acquittance on adjustment of accounts and no collusion or unfairness in the transaction being shewn, judgment against the claim.—*S. D. A. Sel. Rep. 12th Sept. 1805, vol. 1, p. 104.*

The seller of a bill of exchange, not discharged, though accepted, by the drawer, made responsible in the first instance.

405. The seller of a bill of exchange which was not discharged though accepted by the drawer, held responsible for the amount in the first instance without reference to the acceptor.—*S. D. A. Sel. Rep. 10th Dec. 1822, vol. 3, p. 177.*

The seller of a bill of exchange is answerable for the amount in the first instance when not paid by the drawer.

406. Held, that the seller of a bill of exchange is answerable for the amount in the first instance, when not paid by the drawer; that his having lodged the amount of it in the hands of another banker on account of the purchaser without the purchaser's sanction, does not exonerate him, and that his not having received back the bill or caused it to be cancelled, affords sufficient presumption, in the absence of proof to the contrary, that such sanction was not obtained.—*S. D. A. Sel. Rep. 21th July 1823, vol. 3, p. 248.*

A bill of exchange not invalid, if not drawn on stamped paper, beyond the limits of the Company's territories.

407. The fact of a bill of exchange not being drawn on stamped paper does not invalidate it, as it was drawn at a place not within the limits of the territories of the Honourable Company, where no stamps are used.—*S. D. A. Sel. Rep. 24th July 1823, vol. 3, p. 249.*

408. Held, that the negotiator of a forged bill of exchange, receiving the amount thereof, is liable to refund on a suit against him by the drawee; the payees named in the draft being unknown, and the forgery proved.—*S. D. A. Sel. Rep. 11th Dec. 1827, vol. 4, p. 29.* The negotiator of a forged bill of exchange, receiving the amount of it, is liable to refund the amount.

## SECTION XXIX.

*Champerty.*

409. The appellant having entered into an agreement with a person to give him up half of the estate claimed by him, if the decree should be passed in his favor, in consideration of that person advancing the money required for the costs of suit; the Sudder dewanny adawlut held the transaction to be illegal, and ordered the agreement to be cancelled ere they would admit the appeal.—*S. D. A. Sel. Rep. 19th Jan. 1825, vol. 4, p. 12.* An agreement by an individual to give up half of an estate claimed by him, to another who advanced the money, if the decree were passed in his favor, illegal.

410. An agreement to give up a portion [ ] of the property claimed by a person, on condition of his advancing the funds required for costs of suit [the champerty of the law of England; held to be illegal—*S. D. A. Sel. Rep. 29th Sept. 1836, vol. 6, p. 131.* An agreement to give up a portion of the property claimed, on condition of an advance of the costs of suit, illegal.

411. An agreement to give up 11-16ths of the property claimed, to a person on condition of his advancing the funds required for the costs of suit, held to be illegal—*S. D. A. Sel. Rep. 15th Aug. 1840, vol. 6, p. 298.* Idem.

412. A contract to give up a portion of the property claimed to a person on condition of his advancing the funds required for the costs of suit is illegal, and a joint suit instituted for the recovery of the property by the parties to such contract is liable to be nonsuited.—*Rep. Sum. Cases, 25th April 1842, p. 29.* Idem.

## SECTION XXX.

*Contracts and Engagements.*

413. Claim by the commercial resident for the sum of 5,924 rupees, due on an engagement of one of the respondents, dismissed; the latter not appearing to have failed in his engagement, and the appellant having deprived him of the means of performing it.—*S. D. A. Sel. Rep. 29th April 1805, vol. 1, p. 88.* Claim on an engagement, when the party did not appear to have failed in it, dismissed.

414. Claim by A. on B., for the value of timbers alleged to be his property, sent down to Calcutta for sale, and illegally seized by B.: claim dismissed, on proof that the timbers were provided for B. in pursuance of a contract with C. and D.; and that A., who was only surety for their conveyance to a certain distance, had no legal right or interest in them after their conveyance to that distance.—*S. D. A. Sel. Rep. 5th Aug. 1808, vol. 1, p. 248.* Claim for timbers, by A. on B. dismissed, it being proved that A. had only been surety for their conveyance to a certain distance.

415. A. executed an engagement to B., undertaking to furnish 250 maunds of silk, at stated periods, and in certain quantities, in consideration of receiving advances from time to time; the whole quantity to be delivered on or before a specified day, or on failure thereof subjecting himself to a penalty of one rupee for every seer remaining undelivered. B. had made one advance only, and A. had failed in the performance of his contract. On suit of B. against A, When there was an engagement for 250 maunds of silk, under a penalty, on condition of receiving advances from time to time, & only one advance had been made, the party

could recover the penalty only for the silk on which the advance had been made.

to recover the penalty, for every seer of silk remaining undelivered, as well as for the balance of the silk remaining due on the advance, the Court of Sudder dewanny adawlut held that, according to the spirit of the contract, B. was entitled only to recover the penalty on the non-delivery of silk, for which an advance had been made.—*S. D. A. Sel. Rep.* 26th Oct. 1813, vol. 2, p. 89.

Case in which the S. D. A. awarded only interest on the amount of an engagement, and refused to allow the penalty specified in cl 7, sec 3, reg 31, 1793.

416. A. enters into an engagement to B., acknowledging himself to be in arrear for advances to the amount of 7,746 rupees, and engaging to furnish silk to that value, or on failure thereof to pay ready money with interest, agreeably to Regulation 31, 1793. An action being brought by B. to recover the penalty specified in Clause 7, Section 3 of the abovementioned Regulation, the Sudder dewanny adawlut held that he was only entitled to recover interest at the rate of 12 per cent. on the balance of the arrear, on the ground of the irrelevancy of the clause and section above specified to the case of A.—*S. D. A. Sel. Rep.* 16th July 1816, vol. 2, p. 192.

Case in which the dewan of an agent, who had engaged to be responsible for the fulfilment of their agreement by contractors, was held to his responsibility, tho' the contractors had already furnished other security.

417. The *dewan* of an agent for saltpetre having executed an engagement making him responsible for the fulfilment of their engagement by the contractors, who had received advances for the supply of that article, they having already furnished security, held that an action by the agent will lie against the *dewan* without reference to the other sureties.—*S. D. A. Sel. Rep.* 28th May 1827, vol. 4, p. 238.

Two persons purchase property of a third, on condition of not selling to any one but him, the grant of a putnee talook to a fourth person deemed a breach of the engagement.

418. A. and B. purchase property from C, under condition not to sell to any one but C. Ruled that the grant of a *putnee* talook by A. and B. to D, a stranger, was a violation on their part of the engagement, and as such was set aside.—*S. D. A. Sel. Rep.* 1st March 1836, vol. 6, p. 56.

Decision of the S. D. A. in the case of a contract, relative to real property.

419. In an action for real property under a contract between the plaintiff and defendant the defendant pleaded violation, by the plaintiff, of a separate agreement, on the completion of which the fulfilment of the contract was contingent; the agreement was to have been carried into effect within a specified period, which however, had been exceeded. The Sudder dewanny adawlut overruled the plea on the ground that the defendant had availed himself of the conditions of the agreement after the expiration of the period therein specified.—*S. D. A. Sel. Rep.* 16th March 1839, vol. 6, p. 247.

Decision of the S. D. A. in a case which a person became security for 20,000 for the ultimate award of an appeal to the privy council.

420. With a view to procure the execution of a decree passed in favour of the respondents, but which had been appealed to the King in Council, the appellant's father became surety for the ultimate award, in consideration of which he obtained from the respondents an engagement to pay to him the sum of 20,000 rupees, which sum was stated to have been borrowed from a third person on the credit of the appellant's father. The respondents failing to pay this sum at the time stipulated in their bond, the appellant was served with a notice that he would be sued for the same in the Supreme Court, whereupon he paid the amount. Held, that in this case the respondents were liable to refund to the appellant the amount so paid by him, together with the charge for the notice, and this without reference to the fact whether the amount of the bond was actually realized by the appellant's father or not.—*S. D. A. Sel. Rep.* 3d Oct. 1827, vol. 4, p. 263.

421. For a consideration received, A. engages to effect a release of lands mortgaged by him to B. and make them over to C., or in default of his effecting the release of the lands in question, to make over other lands of equal value : A. fails in effecting the release ; C. claims other equivalent lands, or (in a supplementary plaint) to recover the consideration. Principal and interest of the sum advanced by C. decreed, but no lands; the engagement not being sufficiently specific to maintain a claim for lands. — *S. D. A. Sel. Rep. 24th Feb. 1813, vol. 2, p. 48.*

Case in which principal & interest were awarded, but no lands, the agreement not being sufficient to maintain a case for lands.

## SECTION XXXI.

### *Conveyance.*

422. A., the manager of a joint *talook* held in his own name, was put in confinement by the servants of the superior *zemindar*, for a balance of revenue ; for which, seeing no other mode of discharging it, he executed a conveyance of the *talook* to B, *zemindar's mookhtar*, voluntarily, but without any express authority from the other sharers ; who however allowed B. to hold possession undisturbed for ten years. In a suit after this period against B., for the recovery of this *talook*, on the ground that the conveyance was void, as having been obtained by duress, and executed only by one of the sharers, the Sudder dewanny adawlut, in conformity with the opinion of their pundits determine, that the title of B, under the conveyance is good — *S. D. A. Sel. Rep. 29th Aug. 1801, vol. 1, p. 45.*

Case in which the S. D. A. upheld a conveyance of land, tho' there was an appearance of its having been obtained by duress.

423. A conveyance executed during mortal sickness set aside, on failure of proof that the person who executed it was of sound mind at the time. — *S. D. A. Sel. Rep. 27th Sept. 1801, vol. 1, p. 85.*

A conveyance executed in mortal sickness, set aside, for want of proof that the party was of sound mind.

424. Claim by the father of the appellants, to recover certain lands sold to the respondents by one of the claimant's sons, on the plea that the act was not authorized. The contrary appearing from circumstantial proof, judgment given against the claim. — *S. D. A. Sel. Rep. 21th Feb. 1806, vol. 1, p. 128.*

Claim to recover lands sold to the respondents by one of the claimants, on the plea that he acted without authority, disallowed.

425. Defendant, having admitted the right of plaintiff's mother to certain lands, pleaded a right to them under an alleged conveyance from her to himself, and having failed to prove this conveyance, judgment given for the plaintiff. — *S. D. A. Sel. Rep. 16th Sept. 1808, vol. 1, p. 257.*

A defendant pleads a right to lands under an alleged conveyance from the plaintiff's mother, & failing to prove it, judgment given for the plaintiff.

## SECTION XXXII.

### *Debts.*

426. Claim by the heirs of Nuwab Nujuf Khan, against the estate of General Martine, to recover an estate, assigned in liquidation of a debt, adjudged, on an adjustment of accounts, adopted by the Sudder dewanny adawlut, shewing the debt to have been liquidated. A further action reserved to the claimants for the balance of accounts due to them. — *S. D. A. Sel. Rep. 20th July 1807, vol. 1, p. 199.*

Claim by the heirs of Nuwab Nujuf Khan, against the estate of General Martine.

427. Acquittances of a debt, granted conditionally, are not of avail if the condition be not fulfilled. — *S. D. A. Sel. Rep. 10th Sept. 1811, vol. 1, p. 343.*

Acquittances of a debt granted conditionally, not valid, if the condition be unfulfilled.



Where part of a debt has been realized by the process of the supreme court, the plaintiff may sue for the remainder in the Co.'s courts

428. Part of a debt having been realized by process of the Supreme Court, and the action there having been discontinued, it is still competent to the claimant to sue for the remainder in a Provincial court, though the claim to be reimbursed the costs of suit incurred in the former court will be rejected.—*S. D. A. Sel. Rep.* 16th Jan. 1821, vol. 3, p. 66.

The rightful proprietor, on coming into possession of his estate, is liable for money borrowed by one erroneously entered as proprietor, to discharge arrears of public revenue

429. Money having been borrowed to discharge arrears of public revenue, by a person, erroneously registered as proprietor of an estate, the rightful proprietor, on coming into possession will be held liable for the debt : and this is conformable to Hindoo law.—*S. D. A. Sel. Rep.* 5th June 1821, vol. 3, p. 93.

A sale by a debtor to his surety being set aside, as extorted by violence, the debtor must still be compelled to pay the principal and interest of money borrowed on the surety's credit

430. A sale made by a debtor to his surety having been set aside as extorted by violence, the court will nevertheless compel the debtor to pay to his surety the amount [principal and interest] which had been borrowed on the credit of the surety, declaring at the same time that the latter should be responsible to the original creditor.—*S. D. A. Sel. Rep.* 11th June 1822, vol. 3, p. 156.

Owing to a want of responsibility in the witnesses, a claim to recover money under a bond dismissed.

431. Claim to recover a debt under a bond dismissed, the Court not believing the evidence of the witnesses of the plaintiff, chiefly owing to their want of respectability.—*S. D. A. Sel. Rep.* 21st Sept. 1825, vol. 4, p. 90.

Receipts on paper stamped six years after the date of execution, declare inadmissible, & the claim adjudged.

432. In an action for debt, the borrower pleads payment, and produces receipts on paper stamped six years after the date of their execution. Held that such documents were inadmissible, and claim adjudged, for this and other reasons.—*S. D. A. Sel. Rep.* 26th Jan. 1826, vol. 4, p. 108.

## SECTION XXXIII.

### *Fraud, Embezzlement and Corruption.*

Where a will had been dishonestly suppressed by an appellant, he was not suffered to derive any benefit from it

A will, not published by a son for some years after the death of his father, nor exhibited in a suit instituted by his brother for a share of the paternal estate in the Zillah or Provincial court, but first produced in appeal from the judgments of those courts in the Sudder dewanny adawlut, when it was found to contradict the appellant's original pleas, rejected by the latter court, as the appellant could not be suffered to derive advantage from a will, which [if authentic] had been dishonestly suppressed by him.—*S. D. A. Sel. Rep.* 25th Nov 1805, vol. 1, p. 111.

Where A had purchased lands with the money of B, & fraudulently made the sale in his own name, the lands were adjudged to B

434. Lands purchased at a public sale by A, with the money of B, under instructions to make the purchase in the name of B, but fraudulently made by A, in his own name and wrongfully withheld from B. Adjudged to B, on proof of the fraud.—*S. D. A. Sel. Rep.* 2d May 1806, vol. 1, p. 132.

A deed of wuseutnamah set aside as fraudulent and void.

435. A deed called a wuseutnamah, or deed of inheritance, [in which a widow in possession of a zemindary acknowledged two distant relations of her husband to be her heirs, and transferred the zemindary to them on condition that they should support her for life,] set aside as fraudulent and void, on presumption that it was not the intention of the widow to transfer the estate before her death; and that the clause to that effect was surreptitious, or by some undue means imposed upon her without her voluntary consent.—*S. D. A. Sel. Rep.* July 1806, vol. 1, p. 117.

436. An ikrarnamah, or written acknowledgment, relative to a stated purchase of land, though supported by the testimony of witnesses, set aside, as apparently fraudulent, under circumstances of strong presumption at variance with the purport of it.—*S. D. A. Sel. Rep. 25th Aug. 1806, vol. 1, p. 157.*

An ikrarnamah relative to the purchase of land, set aside as apparently fraudulent, on presumptive evidence.

437. A bond, having been taken, evidently by undue means, through the official influence of the *dewan* to a Collector, but nominally granted in favour of one of his dependants [a writer in the Collector's office who could not, from his means and situation in life, be supposed by any probability to have been the principal in the transaction.] is cancelled as illegal and fraudulent.—*S. D. A. Sel. Rep. 19th Sept. 1806, vol. 1, p. 165.*

A bond taken evidently through the official influence of a collector's *dewan*, cancelled as illegal & fraudulent.

438. Since the enactment of Regulation 7, 1799, the courts can give no remedy against a fraudulent agent employed to purchase lands, in his own name, at a Collector's sale in an action for possession; but may cause him to refund the amount received in an action for debt. Yet, on proof of a conveyance subsequently executed by such agent to the real purchaser, the Court will cause performance, without enquiring too minutely into the grounds of the transaction.—*S. D. A. Sel. Rep. 21st Sept. 1809, vol. 1, p. 292. Note.*

The courts cannot give a remedy against a fraudulent agent, who purchased lands in his own name, but may make him refund the amount, in an action for debt.

439. A being indebted to B, grants him a mortgage of his estate, [antedating the mortgage deed eight years,] together with a bond, conditioned for the payment of the debt by yearly instalments, and a warrant of attorney to confess judgment. The estate of A., having been attached by Government for arrears of revenue, and several instalments on the bond being unpaid, B. caused judgment to be entered up in the Supreme Court, on his bond and warrant of confession, and sued out execution, under which the lands were sold by the sheriff at public auction and purchased by C. who afterwards sold them by private contract to D. Seven years after, A. having died, his son and heir sued B., C. and D., to recover the lands, on the plea that the mortgage to B. by A. was fictitious, and granted with a view of screening his property from other creditors; and that B. had executed an engagement to that effect, promising that should he cause the estate to be sold under the deeds in his possession, he would himself become the purchaser, and cause it to be transferred to the son of A. Determined that the engagement [if proved,] being intended to defeat the rights of third parties, cannot avail A., or his representative against B., much less against C. and D., who were purchasers for a valuable consideration, without notice.—*S. D. A. Sel. Rep. 5th Aug. 1814, vol. 2, p. 118.*

Decision of the S. D. A. in a complicated case connected with the purchase of land.

440. The respondents having collusively created a fictitious talook in favour of the appellants, to evade a decree passed against them in another suit were obliged in repelling a suit for the talook to plead their previous collusion. Judgment against them.—*S. D. A. Sel. Rep. 19th May 1829, vol. 4, p. 341.*

Judgment against respondents who had collusively created a fictitious talook in favour of the appellants to evade a decree passed against them.

441. A suit to set aside a sale made by the plaintiff, on the ground that it was merely a nominal and fictitious sale, with a view to evade process of court, dismissed on the principle that no party can take advantage of his own wrong.—*S. D. A. Sel. Rep. 24th March 1816, vol. 7, p. 257.*

A suit to set aside a sale made by plaintiff on the ground that it was fictitious to evade the process of the court, dismissed.

442. A person punished for corruption or extortion in a criminal prosecution, would not afterwards be liable to the fine prescribed by Section 12, Regulation 12, 1803, though he would of course be subject to a civil action for the restitution of the money received by him.—*Con. 231, 12th Jan. 1816.*

A person criminally punished for extortion is not afterwards liable to the fine prescribed in reg. 12, 1803, sec. 12, but may be sued in a civil court for the restitution of the money.

Giving bribes to a public *amlah* is a misdemeanor.

443. Giving bribes to the *amlah* of public officers is punishable as a misdemeanor.—*Con. 522, 4th Sept. 1829.*

Claim for money said to have been embezzled from the ancestor of the respondent by the ancestor of the appellant, dismissed.

444. Claim for a sum of money alleged to have been embezzled by the ancestor of the respondent from the ancestor of the appellant. Claim dismissed, the alleged embezzlement being disproved.—*S. D. A. Sel. Rep. 24th April 1807, vol. 1, p. 183.*

S. D. A. reversed the order of a lower court adjudging repayment of money embezzled, and a fine of one-third by one of the defendants for his connivance.

445. In a suit for money and property embezzled, the Provincial court, in addition to a refund of the amount embezzled, adjudged the payment of one-third of the amount to be made by one of the defendants as a fine for his connivance; but on appeal preferred by him, the *Sudder dewanny adawlut* reversed this order as being unwarranted by the Regulations and inconsistent with the practice of the Civil courts.—*S. D. A. Sel. Rep. 13th Nov. 1827, vol. 4, p. 268.*

## SECTION XXXIV.

### Private Sales.

Claim to certain lands dismissed for defect of proof joined to strong presumption of fraud.

446. Claim of respondent to certain lands as having been purchased by him from the appellant, which the appellant denies, states the lands to be the property of a third person, to whom he is agent. Judgment against the claim, on defect of proof, joined to strong appearances of fraud.—*S. D. A. Sel. Rep. 25th Aug. 1806, vol. 1, p. 157.*

A private sale of lands, which had been separated and assessed by the collector, adjudged invalid, as the sanction of the Board had not been obtained.

447. Claim to certain lands, as included in a *purgannah* sold to the plaintiff at public auction, but withheld by the defendant on the plea of a prior private purchase from the late *zemindar*. The private sale adjudged invalid, (although the land had been separated and assessed by the Collector,) as the sanction of the Board of Revenue, which the Regulations require in such cases, had not been obtained; and the board re-annexed the lands to the *purgannah*, and included them in the public sale. Judgment for the claimant.—*S. D. A. Sel. Rep. 5th July 1808, vol. 1, p. 239.*

Decision of S. D. A. in a case of collusion relative to the sale of lands.

448. Claim by A, on B. and C, for possession of lands, as having been purchased from C. B. pleads that they were not his to sell, and that the sale to himself from C. was conditional, and did not finally take place. On proof to the contrary, and that the plea of B. was collusive, [with the view apparently of averting the sale of his lands in satisfaction of a public demand against him,] judgment given for the claimant.—*S. D. A. Sel. Rep. 3d Dec. 1808, vol.*

Claim by A to certain villages against B and the heirs of C, adjudged, as the right of B and C rested on deeds of sale held to be illegal by sec. 3, reg 38, 1793.

449. Claim by A. to certain villages against B and the heirs of C, adjudged in favour of A, it appearing that the claim of B. and C. to the lands in question rested on deeds of sale which were held to be illegal inasmuch as they were in violation of Section 3, Regulation 38, 1793, which prohibits Europeans from holding lands without the sanction of the Governor General in Council, and were also not sufficiently distinct to give a title to the villages in question.—*S. D. A. Sel. Rep. 18th Jan. 1819, vol. 2, p. 285.*

Sale by the real proprietor of certain lands upheld though his name had not been recorded in the books of the collector, but continued in that of the seller's relations.

450. Sale by the real proprietor of certain lands upheld as valid and binding, though his name had never been recorded in the Collector's book as proprietor, and though the property continued to be registered in the name of one of the seller's relations for some time after the sale.—*S. D. A. Sel. Rep. 7th Aug. 1823, vol. 3, p. 258.*

451. Lands purchased by a father in the name of his son, though registered in the name of the latter being in the possession of the former and his *bonâ fide* property, the son has no right to dispose of them.—*S. D. A. Sel. Rep. 5th June 1824, vol. 3, p. 363.*

The son cannot dispose of lands purchased in his name by his father, which are in the father's possession, and his *bonâ fide* property.

452. In the absence of a bill of sale for landed property and receipt for the purchase money, the Sudder dewanny adawlut held it necessary that the fact of the sale should be satisfactorily established, and in the present instance, considering the proof adduced by the claimant [who was a servant of the alleged vendor, and probably in possession of his seals] to be insufficient to establish the sale, disallowed the claim.—*S. D. A. Sel. Rep. 27th June 1826, vol. 4, p. 168.*

In the absence of a bill of sale for land, the S. D. A. disallowed the claim of the claimant who was the servant of the alleged vendor, and in possession of his seals.

453. Sale made by the administratrix of a real estate held to be invalid under the English law, at the suit of the son, who was declared entitled to possession, on repayment of the principal of the purchase money.—*S. D. A. Sel. Rep. 10th July 1827, vol. 4, p. 213.*

Sale of a real estate by an administratrix held invalid under English law, at the suit of the son.

454. An executor in selling houses or other property belonging to an estate, ought to exact immediate payment, instead of selling upon credit to irresponsible buyers; and in the event of the heirs of the testator suing to recover the assets, the executor or his representative will be responsible for the amount.—*S. D. A. Sel. Rep. 8th Aug. 1806, vol. 1, p. 152.*

An executor in selling houses or other property of an estate must exact immediate payment, and the heirs of the testator may recover it from him.

455. The husband having sold a portion of land belonging to his wife, and the wife subsequently selling the same land to another individual, the first sale was upheld; though the consent of the wife is requisite to the transfer, under the Mahomedan law, such consent being presumed in this instance.—*S. D. A. Sel. Rep. 21st Aug. 1827, vol. 4, p. 259.*

Where a Mahomedan had sold a portion of land belonging to his wife, and the wife subsequently sold it to another, the first sale was upheld.

456. B. formally covenanted to sell an estate to A. and received part of the purchase money; but subsequently completed a sale to C, whose name was recorded in the Collector's book. A. survived this seven years. the suit of his son [brought four years after his death] to recover the estate, and obtain specific performance, is dismissed—no fraud on the part of C. appearing—and the acquiescence of A. being presumed.—*S. D. A. Sel. Rep. 4th Aug. 1830, vol. 5, p. 53.*

B. covenanted to sell land to A., and received part of the purchase money and then sold it to C. A. suit brought 11 years after by A.'s son, to recover the estate, dismissed.

## SECTION XXXV

### *Surety and Security.*

457. A security bond executed by one member of a joint undivided *Hindoo* family, held to be binding on the other members, the separation pleaded to bar the claim not having been established, and deemed to have been fraudulently alleged to evade payment of the debt. A case of *urzamnee* or counter security.—*S. D. A. Sel. Rep. 8th Nov. 1819, vol. 2, p. 316.*

A security bond executed by one member of a joint undivided family held binding on the other members.

458. The Sudder dewanny adawlut will not enforce payment of a sum of money promised by A. to B, if the security tendered by the latter for the former, in consideration of which the promise was made, had never been acted upon, even though the promise was absolute.—*S. D. A. Sel. Rep. 28th Sept. 1820, vol. 3, p. 51.*

If the security tendered by B. to A. in consideration of which the promise of a payment of money was made, has not been acted on, the S. D. A. will not enforce payment.

459. The surety of a Native officer, employed under a Collector, (stamp darogah,) is not liable to make good a defalcation discovered after the death of such Native officer.—*S. D. A. Sel. Rep. 3d Jan. 1821, vol. 3, p. 65.*

The surety of a native officer, not liable to make good a defalcation discovered after the death of the officer.

Judgment against a person alleged to be surety for a native officer, reversed for particular reasons.

460. Judgment against a person alleged to be the security of a Native officer reversed, no investigation having been made by the court below on his denial, and the fact not admitting of satisfactory proof.—*S. D. A. Sel. Rep. 27th Aug. 1822, vol. 3, p. 169.*

A surety is liable for special loss from the misconduct of the person for whom he stood surety

461. Under the general denomination of *hazir* and *malzamin*, a surety answerable for another who contracted for service, is liable for special loss for his misconduct, as if he should desert with his employer's goods.—*S. D. A. Sel. Rep. 6th Jan. 1830, vol. 5, p. 1.*

A becomes surety for B the collector's treasurer, and dies. C then becomes surety. B evades, and the deficiency is levied from C. C. has no claim on this ground on the heirs of A.

462. On further caution required, A. became surety for B., the Collector's treasurer. Subsequent to the death of A., C. and others, on different occasions, became sureties. B. evaded; and the deficit of his accounts was levied on C's estate. Held that A.'s estate was discharged, and C. had no recourse on his heirs, [the clause, them binding notwithstanding,] for defect of community and special covenant as to continued liability.—*S. D. A. Sel. Rep. 22d June 1831, vol. 5, p. 125.*

When A. had become surety from B. the collector's treasurer, he has no right to claim prospective discharge from liability, unless he prove the misconduct of B.

463. A. covenanted with Government that B. [the Collector's treasurer] should honestly administer his office of trust, and made himself answerable for any deficit due by B.; A. has no right to claim prospective discharge from his liability, unless, in claiming such discharge, he proves such misconduct of B. Ruled by four Judges, two dissenting.—*S. D. A. Sel. Rep. 10th Jan. 1833, vol. 5, p. 254.*

Particular case of liability on a farm of an estate, including *malikana*.

464. A. as caution for B. contracted a liability on a *hazuri* farm of C.'s estate, including *malikana* dues of C. The Collector, merely on A.'s application, cannot legally sequester what is due to B. to satisfy A.'s judgment against C.—*S. D. A. Sel. Rep. 29th July 1834, vol. 5, p. 362.*

An acting gomash-tah liable for any deficiency of salt that might occur while his principal was in charge of the salt

465. The zillah Judge having exempted the security of a salt gomash-tah from a liability to payment of the value of deficient salt, on the ground that the security bond specified only "the acting gomash-tah," while it was not clear whether the embezzlement took place while the gomash-tah was merely "acting" or confirmed in his office; the Sudder dewanny adawlut reversed the order, holding that from the terms of the deed the surety clearly made himself responsible for any deficiency that might occur during the period his principal was in charge of the salt stores.—*S. D. A. Sel. Rep. 27th Feb. 1837, vol. 6, p. 150.*

A party who had tendered security for a collector's officer, responsible for the embezzlement of the principal, though the collector had not officially ordered the acceptance of the surety.

466. A party who had tendered security for an officer of a Collector's establishment, held responsible under the circumstances for the amount of an embezzlement committed by his principal, although no express order for the acceptance of the security tendered had been passed by the Collector.—*S. D. A. Sel. Rep. 2d March 1837, vol. 6, p. 153.*

A farther call for security does not absolve the original sureties from responsibility.

467. A call for further security in consequence of that already tendered being insufficient, does not absolve the original sureties from responsibility, as long as the security bonds executed by them are not actually rejected as cancelled.—*S. D. A. Sel. Rep. 27th Jan. 1840, vol. 6, p. 279.*

A surety may alienate property of which he calls himself proprietor, which is not specifically pledged.

468. I am directed to communicate to you, in reply to your letter of the 30th May last, the opinion of the Court, that supposing A. on becoming security for B. (on the latter's borrowing a sum of money) to designate himself as proprietor of certain estates, without expressly stating that those estates are pledged as security for the debt, he (A.) is not legally precluded from alienating the said property, during the continuance of his liability for the security into which he has entered.—*Con. 1017, Cal. C. 21th June, West. C. 15th July 1836.*

469. If a person becoming security for a bond affix his name to the deed in recognition of his responsibility he is liable to be sued as a party jointly with the principal without the necessity of a security bond on a separate stamp.—*Con. 341, 1st June 1821.*

If a person affix his name to a deed in recognition of his responsibility, he is liable to be sued.

470. The joint surety of a farmer against whom with his joint sureties a decree had been given for arrears of rent, cannot be absolved from liability on payment of half the amount, the principal and each of the sureties being severally liable for the full amount of the decree, until it has been completely satisfied.—*Rep. Sum. Cases, 6th April 1841, p. 5.*

The principal and each of the sureties are severally liable for the full amount of the decree till it is satisfied.

471. According to the Hindoo law, the estate of a deceased surety, who engages to fulfil an obligation in the event of default by his principal, is liable for the debts of the principal, accruing on the engagement for the fulfilment of which the surety became responsible.—*S. D. A. Sel. Rep. 13th Feb. 1841, vol 7, p. 15.*

The estate of a deceased surety is liable for the debts of the principal.

## SECTION XXXVI.

### *Right of Pre-emption.*

472. The right of pre-emption (decreed on condition of payment in one month of the purchase money) lost by failure of payment within the time prescribed.—*Rep. Sum. Cases, 26th Dec 1840, p. 51.*

The right of pre-emption lost by failure of payment within the prescribed period

473. A party having claimed the right of pre-emption in certain lands and obtained a decree, is not at liberty to withdraw from his claim, in consequence of the resumption of the lands by Government, and the conclusion of a settlement with other parties.—*Rep. Sum. Cases, 14th May 1841, p. 9.*

A person obtaining a decree on a right of pre-emption cannot withdraw his claim, because the land is resumed by govt. & a settlement made with another

474. The Court are of opinion that, if the land, the right of pre-emption of which is claimed, be land paying revenue to Government either as an entire mehal, or a specific portion thereof with a defined jumma, the cause of action must be estimated at three times the amount of the sudder jumma, as prescribed by Article 8, Schedule B, Regulation 10 of 1829, if lakhiraj, at eighteen times the amount of the computed annual rent; and if it be land paying revenue to Government, but neither an entire mehal nor a specific portion with a defined jumma, at the estimated selling price.—*Con. 1047, Cal. C. 23d Sept, West. C. 14th Oct 1836.*

At what amount land should be estimated, of which the right of pre-emption is claimed.

## SECTION XXXVII

### *Illegitimacy.*

475. Illegitimate children must be classed with their mothers, and considered British subjects, European Foreigners, or Americans; according as their mothers may respectively be British, Foreign, European, or American.—*Con. 806, West. C. 26th July, Cal. C. 6th Sept. 1833.*

Illegitimate children are classed with their mothers

476. The illegitimate son of a European British subject by a Native mother can be tried by the local courts on a charge of adultery.—*Con. 978, West. C. 11th Sept., Cal. C. 9th Oct. 1835.*

The illegitimate son of a European British subject by a native mother may be tried by the local courts for adultery

## SECTION XXXVIII.

*Slavery.\**

No public officer in execution of any decree, &c. shall sell, &c. any person or the right to his compulsory labour, as being a person in a state of slavery.

477. It is hereby enacted and declared, that no public officer shall, in execution of any decree or order of court, or for the enforcement of any demand of rent or revenue sell, or cause to be sold, any person, or the right to the compulsory labour or services of any person on the ground that such person is in a state of slavery.—*Act V. 1843,*

*Sect. 1.*

No rights arising out of an alleged property in the person, &c. of another as a slave, shall be enforced by any court, &c.

478. And it is hereby declared and enacted that no rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any Civil or Criminal court or Magistrate within the territories of the East India Company.—*Ibid,*

*Sect. 2*

No person who may have acquired property, &c. shall be dispossessed, &c. on the ground that the person from whom it was derived was a slave.

479. And it is hereby declared and enacted, that no person who may have acquired property by his own industry, or by the exercise of any art, calling or profession, or by inheritance, assignment, gift or bequest, shall be dispossessed of such property or prevented from taking possession thereof on the ground that such person from whom the property may have been derived was a slave.—*Ibid, Sect. 3.*

Any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being a slave.

480. And it is hereby enacted, that any act which would be a penal offence if done to a free man shall be equally an offence if done to any person on the pretext of his being in a condition of slavery.—*Ibid, Sect. 4.*

The marriage of a Mahomedan with a slave girl has no legal effect.

491. The marriage of a Mahomedan with his slave girl is of no effect in law.—*S. D. A. Sel. Rep. 20th July 1801, vol. 1, p. 48.*

Grounds on which the claim of a mistress to a dancing girl, whom she had purchased and educated, was disallowed.

492. A dancing girl having left her mistress by whom she had been purchased while a child and educated, and having discontinued the payment of a monthly allowance to which she had bound herself by a written obligation; on suit by the mistress to enforce the obligation or recover the girl, claim disallowed, the girl not being legally a slave, and the mistress not having proved that what had already been received was insufficient to cover the expence of her education.—*S. D. A. Sel. Rep. 28th March 1822, vol. 3, p. 141.*

What gives a legal right to a Muslim to the service of another, as his slave.

493. A legal right, to the service of another person, only can arise to a *Moslim*, when the party claimed as his slave, or his progenitor, was an infidel captive to a *Moslim* force prevailing in holy war.—*S. D. A. Sel. Rep. 29th Aug. 1830, vol. 5, p. 59.*

Case in which a claim of A to B, C and D as his hereditary slaves, was disallowed.

484. A. claims the descendants of B, C., and D., as his hereditary slaves. The Zillah and Provincial courts adjudge the claim, inferring slavery from continuous service rendered, other circumstances, and a written acknowledgment of B., C. and D. On special appeal the decisions of the lower courts are reversed by one Judge, because he distrusted the evidence

\* The cognizance of cases of slavery by the Company's Courts having been abolished by Act V. 1843, the whole of the reported cases on this subject are here brought under one head.

offered, to shew services rendered and the alleged deed,—and by the other for this, that it did not follow because the defendants had rendered services, as well as paid for lands held of plaintiff that they were his slaves, for claim to rent including service ceased on abdication of land.—*S. D. A. Sel. Rep. 5th May 1832, vol. 5, p. 243.*

485. Special appeal admitted in case of alleged slavery, where the facts found did not seem to justify the inference of legal slavery; an exaction of security from appellant waived on authority of a precedent. Judgment of the Zillah court, affirmed by the Provincial court, reversed *in toto* in regard to all the defendants, though all did not appeal.—*Ibid.*

Decision of the S. D. A. in a case of alleged slavery where the facts did not justify the inference of legal slavery.

486. A. claimed, as his hereditary slaves, B. and his family, alleging that their forefather C. had been one of the slaves of his family, and he and his descendants, including B. and the other defendants, had continuously rendered service, and received support in lodging and small assignments of land. A. could produce no title to prove the hereditary servitude of B. Held that, if adduced, the court could not, on the facts charged, equitably adjudge into servitude the existing and, therefore, all future descendants of C.—*S. D. A. Sel. Rep. 21th Nov. 1832, vol. 5, p. 219.*

Case in which the S. D. A. could not equitably adjudge into servitude the existing and all future descendants of a slave.

487. Under the Hindoo law, a slave who is maintained on consideration of servitude, is entitled to release on relinquishment of the maintenance.—*S. D. A. Sel. Rep. 7th Dec. 1835, vol. 6, p. 45.*

How a slave is entitled to release under the Hindoo law.

## SECTION XXXIX.

### *Local and Family Usages.*

488. The proprietary dues levied on iron ore manufactured does not necessarily belong to the proprietor of the soil, if it should have been the usage to consider such property as distinct from the soil.—*S. D. A. Sel. Rep. 31st July 1811, vol. 1, p. 337.*

The proprietary dues levied on iron ore do not necessarily belong to the proprietor of the soil.

489. An action by the zemindar of Chota Nagpore for the resumption of a jughine tenure was decided in his favour on the ground of local usage.—*S. D. A. Sel. Rep. 3d Dec. 1836, vol. 6, p. 133.*

Local usage in Chota Nagpore.

490. According to family usage the Rajah of Pachete [within the jurisdiction of the Governor General's Agent for the division of Hazareebagh] has the power of cancelling grants made by his predecessors in the raj.—*S. D. A. Sel. Rep. 22d Feb. 1837, vol. 6, p. 110.*

Family usage of the rajah of Pachete.

491. Held, that it is not competent to the reigning Rajah of Tipperah to alienate the lands of the zemindary of the raj for a period extending beyond the term of his own life.—*S. D. A. Sel. Rep. 28th March 1837, vol. 6, p. 155.*

The rajah of Tipperah cannot alienate his land beyond the term of his own life.

492. In a suit for succession to a moiety of the estate of the Rajah of Tirhoot, the claim was dismissed on the ground that the succession devolved upon the defendant in virtue of a deed executed in his favour by the late incumbent, such succession being in conformity with the long established usage of the family, in which the title and estate had uniformly devolved entire for many generations.—*S. D. A. Sel. Rep. 27th Feb. 1846, vol. 7, p. 229.*

The long established usage of the family of the rajah of Tirhoot will regulate the succession of property.



## SECTION XL.

*Libel and Defamation.*

Defamatory expressions used by a party in the course of a judicial proceeding, not actionable

493. Defamatory and libellous expressions, when used by a party in the course of a judicial proceeding are not actionable though punishable as a contempt, by the court in which they are used.—*S. D. A. Sel. Rep. 22d April 1841, vol. 7, p. 29.*

Damages will not be awarded for alleged defamation on questionable & conflicting evidence

494. The Court will not assess or award damages on questionable and conflicting evidence adduced by plaintiff, for alleged defamation of character.—*S. D. A. Sel. Rep. 14th Sept. 1842, vol. 7 p. 115.*

Damages of 10,000 rs and costs awarded against the defendants for charging the postmaster of Turhoot with clandestinely opening a parcel

495. An action for recovery of damages for defamation, in consequence of the defendants having in a petition charged the plaintiff, who was Postmaster at Turhoot, with having clandestinely opened a parcel containing certain papers. The Principal Sudder Ameen dismissed the claim for (as observed by the court) very unsatisfactory reasons.—The court reversed the decree, and awarded 10,000 rupees damages, with costs, against the defendants.—*S. D. A. Sel. Rep. 15th Jan. 1844, vol. 7, p. 149.*

Slander against a female of good family, not a purdah woman may be visited with damages in a civil court

496. Slander against a female of good character, although not of that rank in life which renders her seclusion necessary, may be visited by damages in a Civil court.—*S. D. A. Sel. Rep. 13th March 1845, vol. 7, p. 193.*

Damages awarded against a party for falsely charging the plaintiff with deonty

497. Damages were awarded against a party for having falsely charged the plaintiff with deonty; but a Police darogah, against whom they were also sought, having acted legally upon that party's information, was exonerated.—*S. D. A. Sel. Rep. 5th May 1840, vol. 7, p. 204*

S. D. A. award 1000 rs damages to an unbecoming judicial officer against a party who had charged him with official corruption

498. In an action for damages preferred by an uncovenanted judicial officer, against a party who had charged him with corruption in the discharge of his official duty, the Sudder dewanny adawlut confirmed the decree of the lower court which awarded to the plaintiff damages to the amount of 1,000 rupees.—*S. D. A. Sel. Rep. 4th Aug. 1836, vol. 6, p. 97.*

## SECTION XLI.

*Miscellaneous Decisions in Suits regarding Real and Personal Property.*

If one of three brothers, to whom land was sold in joint partnership, prefers a claim for it, he is entitled to a decree for the whole of the property.

499. In a claim to obtain possession of landed property conditionally sold to three brothers in joint partnership, which was preferred by one, the Court of Sudder dewanny adawlut decided that the plaintiff was entitled to a decree to the whole extent of the property purchased in coparcenary.—*S. D. A. Sel. Rep. 30th Dec. 1844, vol. 7, p. 187.*

Course pursued where a party had deposited a sum with a collector, as an investment in the public funds, but died before obtaining the promissory note, and the heirs claimed repayment

500. A claim, for repayment of a deposit, against a Collector by the heirs of a party deceased, who had deposited a sum of money as an investment in the public funds, but died before obtaining the promissory note, disallowed, sale of the promissory note and distribution of proceeds among the heirs ordered.—*S. D. A. Sel. Rep. 2d Feb. 1841, vol. 7, p. 13.*

In a claim for land under a pottah alleged by the lessee to

501. In an action for certain lands held under a pottah alleged by the lessee to convey a lease in perpetuity, but declared by the lessor to be conditional, the pottah itself not having

been produced, it was held under the circumstances that the lessor had not the power of summary ejectment, but should have sued to set aside the lease.—*S. D. A. Sel. Rep. 17th June 1811, vol. 7, p. 37*

convey a title in perpetuity, and by the lessor to be conditional, the lessor must sue to set aside the lease, but cannot summarily eject

502. The fact of the quantity of land comprised within a parcel for which the plaintiff sued, with mention of its boundaries, being somewhat in excess of that mentioned in the petition of plaint, held to be no bar to the recovery by the plaintiff of the entire parcel.—*S. D. A. Sel. Rep. 23d June 1811, vol. 7, p. 39.*

Where the quantity of land was somewhat in excess of that mentioned in the petition of plaint, the entire parcel decreed to the plaintiff.

503. The Zillah court reversed the sale of a talook made in execution of a summary decree, which summary decree was itself subsequently set aside, and directed the purchaser to sue the decreeholder for the price of the estate. The Sudder dewanny adawlut confirmed the reversal of the sale, but declared the auction purchaser entitled at once to the recovery of the price paid by him, which they decreed against the decreeholder, with interest from the date when the money was paid.—*S. D. A. Sel. Rep. 5th June 1814, vol. 7, p. 172.*

Where the sale of a talook in execution of a summary decree was reversed, the S. D. A. declared the auction purchaser entitled to recover the price paid by him, with interest, from the decreeholder.

504. In an action for real property, a third party, who claimed the proprietary right in the same in the court of the Principal Sudder Ameer, on a judgment being given in favor of the plaintiff, appealed to the Zillah court. The decree of the Zillah court in favor of such third party, upheld by the Sudder dewanny adawlut —*S. D. A. Sel. Rep. 6th Oct. 1811, vol. 7, p. 52.*

Case in which the claim of a third party for the proprietary right in real property was allowed by the Zillah court, and upheld by the S. D. A.

505. In a claim for real property, the plaintiff denied the facts, and impugned the merits of a decree passed by the Sudder dewanny adawlut in an action regarding the same property between the ancestors of the parties to the present suit. Held, under these circumstances, that the former decree was binding as between the present parties.—*S. D. A. Sel. Rep. 30th Nov. 1811, vol. 7, p. 57.*

A former decree of the S. D. A. for the same property between the ancestors of the parties to a new suit was held binding as between the present parties.

506. In a suit instituted for the purpose of effecting a mutation of names in the Collector's register of landed proprietors, on an apparent collusive understanding between the parties in order to defeat the rights of others, the Sudder dewanny adawlut gave judgment as *between the parties* agreeably to the admission of the defendant, but made all costs, including those of a claimant who intervened as a third party, chargeable to the plaintiff —*S. D. A. Sel. Rep. 29th March 1812, vol. 7, p. 78.*

Decision of the S. D. A. in a suit instituted to effect a mutation of names of landed proprietors in the register of the collector, which appeared to be collusive to defeat the rights of others.

507. It having been proved that one of the defendants, a zemindar, had instigated a riotous attack on the zemindary cutcherry of the plaintiff, the Sudder dewanny adawlut, on the suit of the latter, awarded to him the value of the property plundered and a reasonable sum as damages.—*S. D. A. Sel. Rep. 30th Nov. 1813, vol. 7, p. 135.*

Where a zemindar had instigated a riotous attack, the S. D. A. awarded against him the value of the property plundered, and a reasonable sum as damages.

508. The plaintiff sued the defendants, a mother and her daughters, for recovery of a sum of money lent to the former on the security of a farming engagement of a certain village, the right of the mother in which was disputed by the daughters, who had obtained possession to the ejectment of the plaintiff. Under these circumstances, it was held by the Sudder dewanny adawlut that the zillah Judge was wrong in declaring that the village was liable for the debt, and that he should have confined himself to giving a decree to the plaintiff for the money due to him, leaving the question of the liability of property to the stage of execution of the decree.—*S. D. A. Sel. Rep. 5th June 1813, vol. 7, p. 125.*

Where a sum of money was lent on the security of a farming engagement of a village, the court should decree for the money lent, and not declare the village liable for it.

A plaintiff sues to set aside a sale, under peculiar circumstances, and is nonsuited by the S. D. A

509. The plaintiff sued to set aside a sale, made in execution of a decree of certain property alleged to have been previously purchased by him in the name of his daughter-in-law. As the latter, who was the nominal vendee, was not made a party to the suit, the *Sudder dewauny adawlut* nonsuited the plaintiff.—*S. D. A. Sel. Rep. 3d May 1842, vol. 7, p. 95.*

In a suit between two parties, judgment in favor of one does not bar the claim of a party not a party to the suit, to the lands.

510. In a suit between two individuals, judgment in favor of one of the parties held not to bar the claim of Government, not a party to the suit, to the lands affected by that judgment.—*S. D. A. Sel. Rep. 12th Feb. 1817, vol. 2, p. 227.*

## CHAPTER VII.

### APPEALS.

#### SECTION I.

#### *Summary Appeals from the Decrees of Moonsiffs, Sudder Ameen, and Principal Sudder Ameen*

1. It is hereby enacted, that from the first day of October, 1838, it shall be competent to the zillah and city Judges, in the territories subject to the Presidency of Fort William in Bengal, to receive a summary appeal from the orders or decrees of the Moonsiffs subordinate to them, in cases in which such Moonsiffs may have refused to admit any suit regularly cognizable by them, or may have dismissed, on the ground of delay, informality, or other default, without an investigation of the merits of the case, any such suit which they may have admitted, or any suit regularly referred to them.—*Act XXII. 1838, Sect. 1.*

Zillah & city judges may receive a summary appeal from the orders or decrees of moonsiffs if they have refused to admit any suit cognizable by them, or have dismissed it for delay, informality or other default, without investigation of the merits.

2. And it is hereby enacted, that it shall be competent to the zillah or city Judge to receive a summary appeal from the orders of any Principal Sudder Ameen or Sudder Ameen, rejecting any original suit cognizable by him, and that all rules applicable to summary appeals from orders dismissing original suits on the ground of any default shall be applicable to the summary appeals given by this Act — *Act IX. 1814, Sect. 4.*

Zillah or city judge to receive summary appeals from orders of P S A or S A, rejecting any original suit cognizable by him

3. A summary appeal from a judgment passed in appeal by the Principal Sudder Ameen lies to the Sudder dewanny adawlut, and not to the zillah Judge.—*Rep. Sum. Cases, 21st June 1847.*

A summary appeal from a judgment passed in appeal by the P S A lies to the S D A., and not to the judge.

4. The provisions contained in Sections 2 and 3, Regulation 26, 1814, with any modifications of them which may have been since enacted regarding the admission and hearing of special and summary appeals, as well as the rule contained in clause second, Section 4 of the aforesaid Regulation, relative to the review of judgments, shall be held applicable to original suits and appeals tried by Principal Sudder Ameen.—*Reg. 5, 1831, Sect. 19, Cl. 1.*

Special or summary appeals from the decisions of P S A how to be admitted. Review of judgment how to be applied for

5. And it is hereby enacted, that the provisions contained in the fifth and six following clauses of Section 3, Regulation 26 of 1814, and Section 2, Regulation 12 of 1833, and Section 7, Regulation 9 of 1831, of the Bengal code, shall apply to the summary appeals preferred under the authority of this Act.—*Act XXII. 1838, Sect. 2.*

Cl. 5 to 11, see Reg. 26, 1814, & Sect. 2, Reg. 12, 1833, and Sec. 7, Reg. 9, 1831, shall apply to the summary appeals preferred under this Act.

6. In all the preceding cases, the summary appeal shall be preferred within the same limited period as is prescribed for the admission of regular appeals, and subject to the provisions contained in the following clauses.—*Reg. 26, 1814, Sect. 3, Cl. 5.*

Limitation of time for the admission of summary appeals.

The petition for a summary appeal to be written on what stamped paper.

7. Whenever a party may be desirous of preferring a summary appeal in the cases abovementioned, he shall appear either in person, or by a vakcel duly authorized, before the court, which, under the preceding rules, may be competent to receive such appeal; and shall present a petition, written on the stamped paper prescribed by Section 18, Regulation 1, 1814, [now Regulation 10, 1820,] and accompanied by an attested copy of the order or decree passed in the case.—*Reg. 26, 1814, Sect. 3, Cl. 6.*

Party not liable to pay the institution fee nor to furnish the usual deposit, or security.

8. The party presenting such petition, shall not be liable to the payment of the stamp duty, substituted for the institution fee, by Section 13, Regulation 1, 1814; nor shall he be required to furnish the deposit for the fee of his vakcel, or any security; except such as may be eventually necessary under the Regulations in force, for staying the execution of the decree, from which the appeal may be preferred.—*Ibid, Cl. 7.*

Exception.

Mode of proceeding in summary appeals.

9. It shall not be requisite to give any notice to the respondent, or to require his attendance on such summary appeal being preferred, unless in any particular instance the court may deem it proper to adopt that measure; nor shall any pleadings or proceedings be holden on such summary appeal, excepting such as may suffice to determine whether the suit was or was not rejected or dismissed by the lower court on sufficient grounds and in conformity with the Regulations.—*Ibid, Cl. 8.*

In what cases the lower courts may be directed to receive or to revive the suit

10. If upon such summary proceedings, it shall appear to the court, that the suit was rejected in the first instance, or after being admitted, was dismissed without an investigation of the merits, upon insufficient grounds; or in opposition to the Regulations, it shall be competent to the Sudder dewanny adawlut, to the Provincial courts, and to the zillah or city Judges respectively, to direct the lower court or officer, from whose order or decree the petition of appeal may have been presented, to receive the original suit or appeal, or to revive it, if it shall have been received and dismissed, and to try and determine such cause on its merits, according to the Regulations.—*Ibid, Cl. 9.*

Explanation of the phrase "or in opposition to the regulations" in clause 9, at above

11. The summary appeal authorized by Section 3, Regulation 26, can be admitted only when a suit has been dismissed or rejected on the ground of delay, informality, or other default, without an investigation of the merits. The words "or in opposition to the Regulations," used in Clause 9 of the section, apply to cases which have been so dismissed or rejected on grounds not warranted by the Regulations, or to the omission prior to the dismissal or rejection of the suit of any of the forms prescribed by the Regulations for calling on a party to attend and shew cause why his suit should not be dismissed, &c.—*Con. 805, Cal. C. 19th July, West. C. 6th Sept 1833.*

In what cases the courts may reject the summary appeal and fine the appellant

12. If on the contrary such summary appeal shall be found to be groundless and litigious, the Sudder dewanny adawlut, the Provincial courts, and the zillah or city Judges, are respectively authorized and required to reject the petition for a summary appeal, and to impose such fine on the litigious appellant, as may appear to be in each instance proportionable to the condition of the party, and to the circumstances of the case; provided that such fine shall in no case exceed the amount of the stamp duty, which would have been payable by the appellant on the institution of such case, as a regular suit or appeal. All orders, imposing fines, or rejecting petitions of summary appeal,

The orders of the courts in such cases to be final.

which may be passed under the preceding clause, by the Sudder dewanny adawlut, the Provincial courts, or by the zillah or city Judges shall be final and conclusive.—*Reg. 26, 1814, Sect. 3, Cl. 10.*

13. The rejection of a summary appeal is not a bar to the admission of a regular appeal, provided the latter be otherwise admissible under the Regulations in force.—*Con. 723, 19th Oct. 1832.*

The rejection of a summary appeal no bar to the admission of a regular appeal.

14. And it is hereby enacted. that Clause 2, Section 27, Regulation 23 of 1814, of the Bengal code, and Clause 2, Section 26, Regulation 6 of 1816, of the Madras code, are repealed, and no appeal shall lie against the decision passed in accordance with the provisions of the preceding clauses of this Act, other than a summary appeal on the fact of default.—*Act XXX. 1841, Sect. 3.*

Repeals cl. 2, sec. 27, reg. 23, 1814, of the Bengal code, and cl. 2, sec. 26, reg. 6, 1816, of the Madras code. Enacts,—no appeal against dismissal of a suit or appeal, other than a summary appeal on the fact of default, shall be allowed.

15. On a consideration of the provisions of Section 3, Regulation 26, 1814, and Sections 7 and 8, Regulation 19, 1817, the Court are of opinion, that in cases in which a summary appeal is admissible, under the section first mentioned, such appeal may be admitted, although the appellant may erroneously, or from other cause, have applied for the admission of a special appeal on stamped paper of the prescribed value; and that, in such cases, stamp duty paid by the appellant on his petition shall, with the exception of two rupees, the value of the proper stamp for a petition of summary appeal, be returned to him.—*Con. 613, 25th Nov. 1831.*

Where a summary appeal is admissible, it may be admitted though the appellant may erroneously have applied for a special appeal on stamped paper of the prescribed value: the value of the paper, except 2 rs., will be returned to him.

16. A summary appeal will not lie from an order of a lower court, rejecting a claim on a regular suit because of the documentary evidence of the plaintiff being invalid for want of the prescribed stamp: the appeal must be regular.—*Rep. Sum. Cases, 11th April 1843, p. 47.*

A summary appeal will not lie, where a claim on a regular suit has been dismissed, because the exhibits were invalid for want of a proper stamp.

17. The Judge may admit a summary appeal from the decision of a Sudder Ameen, after the expiration of the prescribed period for appealing on satisfactory explanation being given for the delay.—*Con. 477, 18th April 1828.*

The Judge may admit a summary appeal from a S. A., after the prescribed period, on a satisfactory explanation.

18. A summary appeal may be had from a nonsuit passed under Article 5, Schedule B, Regulation 10 of 1829, if it can be shewn by the plaintiff that the value of the property claimed has not been underrated by him, and that consequently the order passed by the Sudder Ameen or Principal Sudder Ameen was erroneous.—*Con. 872, West. C. 21st Feb., Cal. C. 24th Oct. 1834.*

Case in which a summary appeal may be had from a nonsuit under art. 5, sch. B, reg. 10, 1829.

19. A Principal Sudder Ameen gave judgment in a case in which he had no jurisdiction. On application to the Sudder dewanny adawlut, the Court held that the irregular decree could not be set aside, on a mere summary application.—*Rep. Sum. Cases, 24th May 1842, p. 31.*

Where a P S A gave judgment in a case in which he had no jurisdiction, the irregular decree cannot be set aside on a summary application.

20. Appeal from nonsuit, on the ground of former judgment, in a suit brought on behalf of appellants by one not duly authorized on their part, admitted as summary.—*S. D. A. Sel. Rep. 12th May 1812, vol. 2, p. 14.*

Summary appeal from a nonsuit in a suit brought by one unauthorized by the appellants.

21. A decree having been given against the appellant in the Zillah court by a summary decision, passed under the provisions of Regulation 49, 1793, the appellant petitioned the Provincial court to admit an appeal from that decision, on the ground that the Regulation

Case in which the S D. A. admitted a summary appeal, to investigate the appellant's objections to

the summary decision against him.

mentioned was not relevant to the case. His petition was rejected, but the Sudder dewanny adawlut held that an appeal should be admitted for the purpose of investigating the appellant's objections.—*S. D. A. Sel. Rep.* 10th Sept. 1812, vol. 2, p. 39.

S. D. A. orders a lower court to enquire into the truth of the appellant's statement previously to rejecting his appeal explanatory of delay.

22. The Provincial court having rejected a petition of appeal on the ground of the period allowed for appealing having elapsed, without enquiring into the pleas explanatory of the delay, the Sudder dewanny adawlut, on a summary appeal, ordered that court to enquire into the truth of the statement of the appellant previously to rejecting the appeal.—*S. D. A. Sel. Rep.* 7th May 1819, vol. 2, p. 298.

Special decision of the P. S. A. on a summary appeal involving the proprietary right of lands.

23. The proprietary right having been formally investigated and decided upon, in a summary suit by the Register, whose decision, on a regular appeal having been erroneously admitted, was reversed by the Provincial court; the Sudder dewanny adawlut, in a summary appeal, did not think fit to touch the reversal, but specially directed that the party in possession before the dispute should not be disturbed.—*S. D. A. Sel. Rep.* 6th Jan. 1820, vol. 3, p. 3.

## SECTION II.

### *Summary Appeals from Principal Sudder Ameens in cases above Five Thousand Rupees in value, and from Zillah Courts.*

Summary appeals from the P. S. A. in suits above 5,000 rs. lie to the S. D. A.

24. All summary appeals from the decisions of Principal Sudder Ameens, of the nature contemplated by Section 3, Regulation 26, 1814, in suits above the value of 5000 rupees shall be made direct by the parties to this [the sudder] court.—*Cir. Ord. Cal. and West. C.* 23d Feb. 1838, par. 5.

Cases in which the provincial courts may admit summary appeals.

25. In like manner it shall be competent to a Provincial court [now the Sudder dewanny adawlut] to receive a summary appeal from the orders or decrees of the Zillah or City courts, in cases, in which the latter may have refused to admit an original suit or appeal regularly cognizable by them; or having admitted such suit or appeal, may have dismissed it, without an investigation of the merits on the ground of delay, informality, or other default.—*Reg.* 26, 1814, *Sect.* 3, *Cl.* 3.

Summary appeals from the P. S. A. under sec. 4 and 5, reg. 2, 1806, in suits above 5000 rs. lie to the S. D. A.

26. Upon the same principle, the Court is of opinion, that summary appeals of the nature of those described in the third paragraph of Mr Mainwaring's letter [that is, summary appeals from the decisions of Principal Sudder Ameens passed under Sections 4 and 5, Regulation 2, 1806, in cases exceeding 5000 rupees,] must follow the like course.—*Con.* 1148, *West. C.* 27th April, *Cal. C.* 11th May 1838, par. 3.

Appeals from the P. S. A. in summary and miscellaneous cases made over to him, lie to the zillah judge, and especially to the S. D. A., whatever be the amount.

27. Appeals from orders passed by a Principal Sudder Ameen in execution of his own decree in a suit above the value of 5,000 rupees, as well as appeals from orders passed in such suits under Sections 4 and 5, Regulation 2, 1806, lie direct to the Sudder dewanny adawlut; but appeals in summary and miscellaneous cases made over to a Principal Sudder Ameen under Section 8, Act XXV. 1837, lie in the first instance to the zillah Judge, and specially to the Sudder dewanny adawlut, whether the amount be above or below 5,000 rupees.—*Con.* 1148, *West. C.* 27th April, *Cal. C.* 11th May 1838.

## SECTION III.

*Regular Appeals from Uncovenanted Judges to the Civil Judge.*

28. Any person dissatisfied with the decision of a Moonsiff, shall be at liberty to appeal from it to the Judge, provided the petition of appeal be presented within thirty days after the date on which copies of the decrees may have been furnished or tendered to the parties or to their vakeels, in conformity with Section 41 of this Regulation; a discretionary power however is vested in the Judge of admitting appeals from decisions of the Moonsiffs although the petitions may not be presented within the prescribed period if the appellant shall shew satisfactory cause for not having before presented the petition.—*Reg 23, 1811, Sect. 16, Cl. 1.*

Mode of admitting appeals from the decisions of moonsiffs.

29. All petitions of appeal from decisions of the Moonsiffs are to be presented to the Judge of the zillah or city, in which the Moonsiff may officiate, and the Moonsiffs are prohibited from receiving any petitions of appeal from their own decisions.—*Ibid, Cl. 2.*

Petitions of appeal from decisions of moonsiffs to be presented to the judge.

30. All petitions of appeal from decisions of Moonsiffs are to be presented by the appellant in person, or by one of the authorized vakeels of the court; and if the appeal shall be admitted, and the appellant and respondent shall not plead their cause in person, their respective vakeels are to be allowed the same fees as in other suits tried before the Judge.—*Ibid, Cl. 3.*

How such petitions are to be presented

31. Decisions of the Moonsiffs are not to be set aside for want of form or for irregularity in their proceedings, but on the merits only.—*Ibid, Cl. 4.*

Decisions of moonsiffs not to be set aside for want of form.

*The Rules above in Section 16, Clauses 1, 2, 3 and 4, are made applicable to appeals from the Sudder Ameen by Section 73 of the same Regulation.*

32. And it is hereby enacted, that whenever a zillah or city Judge within the said territories in the exercise of the discretion vested in him by Section 7, Regulation 5, 1831, of the Bengal code, shall refer for trial to a Sudder Ameen, or Principal Sudder Ameen, a suit within the competency of a Moonsiff to decide, such suit shall be subject to the same rules in regard to stamp duties, and to the same rules in regard to appeal as the said suit would have been subjected to had it been received and tried by the Moonsiff in the first instance.—*Act XXI. 1837, Sect. 5.*

Suits referred by zillah judge, under sec 7, reg 5 of 1831, to a S. A., or P. S. A., shall be subject to the same rules in regard to stamps and appeals as if it had been tried by a moonsiff

33. Provided always, that when any such suit shall have been decided by a Principal Sudder Ameen, the appeal from such decision shall be to the zillah or city Judge, and shall be tried by him only, and that the decision of the zillah or city Judge on such appeal shall be final, anything in the existing Regulations to the contrary notwithstanding.—*Ibid, Sect. 6.* [But a special appeal will now be to the Sudder.]

In such suits tried by the P. S. A., the appeal shall be to the zillah or city judge, whose decisions shall be final

34. And it is hereby enacted, that whenever a zillah or city Judge within the said territories shall refer for trial to a Principal Sudder Ameen a suit within the competency of a Sudder Ameen to decide, such suit shall be subject to the same rules in regard to stamp duties, and to the same rules in regard to appeal, as the said suits would have

Suits referred for trial to a P. S. A., shall, if within the competency of a S. A., be subject to the same rules in regard



to stamp duties and appeal, as if they had been referred to the S. D. A., in the first instance.—*Act XXV. 1837, Sect. 7.*

In suits decided by the P. S. A., a regular appeal to the Judge—a special appeal to the S. D. A.

35. In all suits originally decided by the Principal Sudder Ameens, an appeal shall lie to the zillah or city Judge, and a further or special appeal under the provisions of the Regulations applicable to such cases, to the Sudder dewanny adawlut.—*Reg. 5, 1831, Sect. 28, Cl. 2.*

When a suit has been transferred from Bhaugulpore to Purneah, and referred to the S. A., the appeal will lie to the Purneah court.

36 A suit instituted in zillah Bhaugulpore having been transferred to zillah Purneah under the provisions of Section 2, Act XXVII. of 1838, and by the Judge of the latter district referred to his Sudder Ameen for trial :—It was held, on a reference from the Judge of Purneah, that the appeal from the Sudder Ameen's decision will lie to the Purneah and not to the Bhaugulpore Zillah court.—*Con. 1336, Cal. C. 13th and West. C. 27th May 1842.*

That each of the courts of S. D. A. may direct that any original suit or appeal brought before any zillah or city court subordinate to such court of S. D. A. shall be transferred to any other zillah or city court subordinate to the same court of S. D. A.

37. It is hereby enacted, that it shall be lawful for each of the Courts of Sudder dewanny adawlut, within the territories subject to the Presidency of Fort William in Bengal, to direct by an order authenticated by the official signature of the Register of such Court of Sudder dewanny adawlut, that the cognizance of any original suit, or of any appeal which may be brought before any Zillah or City court, subordinate to such Court of Sudder dewanny adawlut, shall be transferred to any other Zillah or City court, subordinate to the same Court of Sudder dewanny adawlut.—*Act III. 1837, Sect. 1.*

Whenever such transfer of any suit shall be made, the court shall record the reason of the transfer in its proceedings.

38. Provided always, that whenever either of the said Courts of Sudder dewanny adawlut shall, in the exercise of the power given by the preceding clause, direct the transfer of the cognizance of any suit, such Court of Sudder dewanny adawlut shall cause the reasons for such transfer to be recorded on its proceedings.—*Ibid, Sect. 2.*

The petition of appeal will be examined by the sherishtadar, & if regular in point of time and stamps, will be received & filed. Any irregularity will be reported to the Judge.

39. Any person dissatisfied with the decision of a Moon-ul, Sudder Ameen or Principal Sudder Ameen, passed in an original suit, being at liberty under the rules at present in force to appeal from such decision as a matter of right to the zillah or city Judge, all such petitions of appeal shall be immediately examined by the sherishtadar, or other head Native officer of the Judge's court, and, provided the petition of appeal be written on stamped paper of the proper value, and presented to the court within the period prescribed by the Regulations, it shall be filed and numbered in the regular register books of the court. All cases in which any deviation from the existing rules may be observable will be brought to the special notice of the Judge, who will pass such orders thereon as may appear proper.—*Cir. Ord. Cal. and West. C. 6th Feb. 1835, par. 1.*

The only exceptions to this rule are cases in which any deviation may be observable from the established practice.

40. The Court observe, that the only exceptions to this rule are cases, in which any deviation may be observable from the established practice of the nature above stated, and which are required by the same paragraph to be brought to the special notice of the Judge, who is to pass such orders thereon as he may think proper.—*Cir. Ord. Cal. and West. C. 28th Sept. 1838, par. 3.*

Where the petition is in every respect regular, this will be certified on the back of it.

41. Where, therefore, the petition of appeal may be in all respects regular and proper, the sherishtadar, or other head Native officer, should immediately certify to that effect, under his signature, on the back of it, and an order should at the same time be passed, directing the original record of the case, or misl, to be placed with the petition of appeal, to enable the Judge when

hearing the latter under the rule laid down in clause 2, Section 2, Regulation 9 of 1831, which has been extended to the courts of the zillah and city Judges by Act VII. of 1838, to refer to any part of the proceedings that he may consider necessary with a view to satisfy himself of the correctness or otherwise of the judgment appealed from. The Court observe that in such cases there can be no reason why, under ordinary circumstances, the examination of the papers by the sherishtadar should not be made, and the order, directing the original misl or record to be placed therewith, passed, on the same day as that on which the petition of appeal may be presented, or, at the farthest, on the next court day.—*Cir. Ord. Cal. and West. C. 28th Sept. 1838, par. 4.*

The misl will then be placed with the petition of appeal.

The examination of the papers by the sherishtadar, and the order regarding the original misl should be made, if possible, on the same day.

42. The zillah or city Judge, after referring to the decree in the original record of the suit, shall then admit the appeal, provided that the petition of appeal and the security required shall have been duly presented in the mode above prescribed, within the periods limited for the admission of such appeals under the existing Regulations.—*Reg. 26, 1814, Sect. 8, Cl. 3.*

The judge will then admit the appeal after referring to the original decree.

43. For the admission of a regular appeal, they observe that nothing further is requisite than for you to ascertain, that the prescribed period of appeal has not expired, and that the petition of appeal is written on paper of the prescribed stamp, (vide Circular order, No. 60, 24th August, 1832.) But after the appeal has been filed, and is brought on for hearing, either after process having been served on the respondent, or under the rules of Clause 3, Section 16, Regulation 5, 1831, should it appear to you that the party appealing has had due notice served upon him by the Court of original jurisdiction and that the Judge presiding in that court has decided the suit agreeably to the rules of practice and to the Regulations of Government; and further that the reasons of default assigned by the appellant are frivolous or groundless; or that he has wilfully neglected to attend in the lower court; in such case, the Court are clearly of opinion, that the appeal should be dismissed. You will hence perceive that the mere fact of a case having been tried ex-parte, is not a sufficient ground for either sending it back for re-trial or for proceeding to investigate the pleas of the appellant to the original suit, provided it has been legally decided by the Court of first instance.—*Cir. Ord. 12th March 1811, par. 2.*

Course to be pursued by the appellate court, when the petition of appeal is found to be in all respects regular.

44. In appeals from the decisions of the Mooniffs or Sudder Ameen, the decisions of the zillah or city Judge shall be final, anything in the existing Regulations to the contrary notwithstanding.—*Reg. 5, 1831, Sect. 28, Cl. 1.*

The mere fact that a case has been tried ex-parte, no reason for remanding it or for investigating the pleas of appellant.

The decisions of zillah or city judges on appeals from the S. A. or mooniffs to be final.

45. Resolved, that the powers vested in the Court of Sudder dewanny adawlut by Clause 2, Section 2, Regulation 9, 1831, on the receipt of a petition of appeal from the decision of an inferior court can be exercised in those cases only in which an appeal is within the cognizance of the court under the general Regulations, and that consequently the Court cannot interfere on the receipt of petitions of appeal against the decision of a zillah or city Judge passed by the latter in appeal from the decision of Sudder Ameen and Mooniffs, the decision of the zillah or city Judge being in such cases declared final by Section 28, Regulation 5, 1831.—*Con. 698, West. C. 27th April, Cal. C. 18th May 1832. [But Act III. 1813, allows a special appeal to the Sudder.]*

The S. D. A. cannot receive appeals from the decision of a zillah and city judge passed by him in appeal from the decisions of S. A. & mooniffs. But act 3, 1813 allows a special appeal.

46. Any party who may be desirous of appealing from a judgment passed against him subsequently to the 1st February, 1815, by a Sudder Ameen, a Register, or a Judge of any Zillah or City court, from which a regular appeal may be admissible under the

The petition of appeal from decisions passed in the zillah & city courts may be presented to the judge

without an authenticated copy of the decree.

The petition need not contain the detailed reasons for the appeal.

But must be written on prescribed stamped paper and accompanied by the requisite security.

Regulations, shall be at liberty to present his petition of appeal without an authenticated copy of the decree, to the Judge of the zillah or city, in which the decision may have been passed. Such petition of appeal shall not be required to contain the specific grounds, or reasons of the appeal, but may state shortly that the party being dissatisfied with the judgment, is desirous of appealing from it. The petition must be written on stamped paper according to the rates and provisions contained in Sections 13 and 14, Regulation 1, 1814, [*now* Regulation 10, 1829] and must be accompanied by the prescribed security for the eventual costs on appeal. — *Reg* 26, 1814, *Sec* 8, *Cl* 2.

The petition of appeal presented to the Judge from the subordinate Judges need not be accompanied by a copy of the decree appealed from.

17. It is by the Calcutta Court, in concurrence with the Western Court, on a reference from the Judge of Unhoth that a remedy to the provisions of Clause 2, Section 8, Regulation 26, 1814, petitions of appeal presented to the District Judge against the decision of the Principal Sudder Ameer, Sudder Ameer, and Munsiff do not require to be accompanied by a copy of the decree appealed from. — *Con* 1159, 20th July 1838.

Appellants authorized to state their reasons of appeal either in the petition or in a separate pleading.

18. The specific objections to the judgment and detailed grounds and reasons for preferring the appeal may be stated at the option of the party in the original petition of appeal or may be subsequently filed in the court trying the appeal as a separate pleading: in the latter case such pleading is to be written on the stamped paper, and according to the rates prescribed for other pleadings in Section 17, Regulation 1, 1814 [*now* Regulation 10, 1829] — *Reg* 26, 1814, *Sec* 8, *Cl* 5.

Value of the stamp on which the reasons for appealing should be written, if not stated in the petition of appeal.

19. The fifth Clause of Section 8, Regulation 26, 1814, which has not been rescinded by Regulation 10, 1829, or any other enactment provides that the specific objections of a judgment appealed from, if not stated in the petition of appeal shall be filed as a separate pleading. The value of the stamp to be used for such pleadings is laid down in No. 9, Schedule B, Regulation 10, 1829 — *Con* 556, 28th May 1830, *par* 2.

The Courts cannot compel appellants to file copies of decrees, and the reasons of appeal with the original petition.

20. The Court directed to observe that it requires a positive enactment to alter the rules prescribed for the admission of appeals, which allow the petitions to be filed without the merit of the reasons for appealing. So that they are not competent to authorize you to proceed in the manner suggested in your second paragraph, that is, to compel appellants to file copies of decrees and reasons of appeal with their petitions of appeal — *Con* 863 *Cal* and *West* C. 14th Feb 1834, *par* 2.

Where the appellant has filed a copy of the decree with his petition of appeal, it shall be returned to him, if the appeal is rejected, and he may file this copy as a special appeal.

21. I am further directed to observe that in cases of the above nature, where the appellant may have filed a copy of the decree of the lower court with his petition for a regular appeal, the same should be returned to him on the rejection of his appeal: and the Court have resolved that in cases open to a special appeal, the appellant shall be allowed to file such copy with his application for the admission of a special appeal, accompanied by a copy of the appellate court's order rejecting his appeal, and affirming the decision of the lower court. — *Con*, *Ord*, *Cal* and *West* C. 28th Sept 1838, *par* 7.

Order of 1st July, 1812, extended to the local appellate courts.

22. The Courts of Sudder dewanny adawlut for the Lower and Western Provinces, are pleased to declare the rule contained in the Circular order, No. 211, of the 1st July, 1812, extended to the local appellate courts. — *Con*, *Ord* 13th April 1817.

The names of all the respondents must be inserted in the petition.

23. The preparation of cases in the Sudder dewanny adawlut for hearing, is often delayed by the omission of parties to insert in their petition of appeal, whether presented to the

local courts, or to the sudder court, the names of all the respondents, (some of whom are referred to by the words "oghya," "and others,") and the consequent inability to issue the prescribed process on the whole of them. As such practice is opposed to the rule of Section 10, Regulation 6, 1793, (Clause 3, Section 10, Regulation 5, 1803, for the Ceded Provinces) petitions of appeals deficient in the respect adverted to must be considered as incomplete, and inadmissible under the Regulations, and not to be acted upon as in any way having the effect of a petition of appeal, with reference to the calculation of the period allowed for appeal.—*Cor. Ord. 1st July 1842, par. 1.*

tion of appeal, and they must not be referred to by the words "oghya," "& others."

54. Whenever, therefore, in future an appellant shall omit the names of any persons who were opposed to him in the lower court, (without stating ground for such omission,) he shall be allowed to supply the defect within the period of appeal, but in the event of neglect so to do, his appeal shall be rejected as incomplete.—*Ibid, par. 2.*

If this defect be not supplied within the period of appeal the appeal will be rejected as incomplete.

55. The Judges and Principal Sadler Amceens, to whom such incomplete petitions of appeal may be presented for transmission to the sudder court, will apprise the parties of the foregoing orders.—*Ibid, par. 3.*

The Judge and P. S. A. will apprise appellants of the foregoing orders.

56. With reference to paragraph 3 of the Circular order, No. 2583, dated 1st July, 1842, I am directed to request that when a petition of appeal, in which all the respondents are not named, may be presented to you, you will certify to this court, in forwarding the appeal, that the party appealing, or his representative, has been apprised of the rule or the Circular. The certificate to this effect should form part of the proceedings of your court forwarding the petition of appeal.—*Cor. Ord. 11th July 1843, par. 1.*

When a petition of appeal is forwarded to the S. D. A. in which all the respondents are not named, the Judge will certify to the appellate court that the appellant has been apprised of the above rule.

57. The rule above alluded to is, of course, not applicable to cases in which the appellant may purposely omit to name, or in any manner indicate, as respondents, any of the parties to the original suit in the Court of first instance—as, for instance, if A. sue B. and C.—obtain a decree against B., and appeal only from that portion of the decree of the lower court which dismisses his claim against C.—not including B. amongst the respondents, it will not be necessary in such cases for the appellate court to serve notice upon B.—*Ibid, par. 2.*

The rule need apply to the cases in which the appellant may purposely omit to name any of the respondents.

58. You are requested to draw the particular attention of the Principal Sadler Amceen to the foregoing orders.—*Ibid, par. 3.*

The P. S. A. is requested to be directed to this effect.

59. Held by the Calcutta Court, in concurrence with the Western Court, on a reference from the Judge of Sylhet, that the practice of estimating the value of the property claimed in appeal, by adding the costs of suit to the original amount, is improper.—*Case 1190, 11th Dec. 1838.*

The practice of estimating the value of the property claimed in appeal, by adding the costs of suit to the original amount, is improper.

60. The pleadings in the courts of those officers shall be written on paper of the value of four rupees, wherever it has been or may be resolved to introduce the provisions of Regulation 5, 1831, except in original suits for property not exceeding one thousand rupees in value or amount, and in cases of appeal from the decisions of Sudder Amceens and Moonsiffs. In such cases, the pleadings shall continue to be written on stamped paper of only one rupee value.—*Reg. 7, 1832, Sect. 3.*

A value of the stamped paper on which pleadings are to be written.

61. I am directed to inform you that the Court are of opinion that appeals to the Judge from the decisions of Registers and Principal Sadler Amceens not being among the excep-

Stamped paper on which the pleadings in appeal are to be written.

Judges from the P. S. A. is to be written.

tions contained in Section 3, Regulation 7, 1832, the pleadings in *all* such cases should be written on stamped paper of the value of four rupees.—*Con. 834, Cal. C. 4th Oct., West. C. 8th Nov. 1833, par. 2.*

Sec 2, reg. 3, 1817, rescinded

62. Section 2, Regulation 3, 1817, is hereby rescinded; and the exemptions contained in the foregoing clause [*viz.* Clause 2, Section 9 of this Regulation] shall not be held applicable to any original suits of appeals of whatever amount which may be instituted in the Zillah of City courts, subsequently to the date fixed for the operation of this Regulation, whether those suits be tried by the zillah or city Judges, or be referred by them for trial to the Sudder Amceens or Registers.—*Reg. 5, 1831, Sect. 9, Cl. 3.*

## SECTION IV.

### *Institution of Regular Appeals—Miscellaneous Rules*

Where the justice of a decree has been admitted, it cannot be appealed against

63. A party having acknowledged the justice of a decree given against him, was not allowed to impeach it in appeal, preferred subsequently to such acknowledgment.—*S. D. A. Sel. Rep. 7th Sept. 1841, vol. 7, p. 44.*

In an action for damages, the appellancy lies to the sum awarded, not to the sum originally claimed

64. In an action for damages the defendant may appeal from the decree of the lower court to the amount of the sum awarded as damages, instead of at the amount of the damages laid by the plaintiff.—*Rep. Sum. Cases, 20th Sept. 1841, p. 18.*

Where an appellant appeals against that part of the decree which dismissed part of his claim, the court may go into the whole merits of the

65. When one half of the amount claimed has been decreed to the plaintiff, if he do not appeal or appear as respondent on the appeal of the defendant, the court cannot amend the decree in his favour. But if he do appear, and in his reply to the petition of appeal object to that part of the decree which dismissed part of his claim, it is competent to the court to go into the whole merits of the case, as affecting both parties, and decide it in the same manner as if the plaintiff had preferred a separate appeal.—*Con. 868, Cal. C. 11th Feb., West. C. 6th May 1831.*

The S. D. A. restored to the file an appeal preferred jointly, but struck off on the application of one

66. The Sudder dewanny adawlut directed the restoration to the file of the zillah Judge of an appeal preferred jointly by two appellants, but struck off on the application of one of them.—*Rep. Sum. Cases, 20th April 1841, p. 8.*

Where a judgment is given against two persons jointly, one cannot appeal for a reversal of half of the decree

67. Where a judgment is given against two persons jointly, one of them is not competent to appeal severally for the reversal of half the decree, nor can half a judgment be appealed from when given against one individual.—*S. D. A. Sel. Rep. 10th Nov. 1824, vol. 3, p. 414.*

The appeal of one party brings the merits of the judgment of the lower court before the superior court, which latter may amend an error without a separate & formal appeal.

68. The appeal of one party brings the merits of the judgment of the lower court before the superior court; which is competent to amend an error, of which respondent, in his answer, complains and a separate and formal appeal, on his part, is not necessary for the purpose.—*S. D. A. Sel. Rep. 31st May 1831, vol. 5, p. 120.*

A judgment creditor may prefer an appeal from the judgment of the lower courts which diminishes the solvency of his debtor.

69. A judgment creditor had intervened in a case in which his debtor was defendant, to assert the right of the latter, and the liability of the contested property to satisfy his claim. His interest was held to entitle him to prefer an appeal from the judgment of the lower courts, which diminished the solvency of his debtor.—*S. D. A. Sel. Rep. 24th April 1833, vol. 5, p. 296.*

70. A., failing in an action against B., appealed: judgment creditors of B., interested in his solvency, were allowed to defend the appeal.—*S. D. A. Sel. Rep. 9th May 1833, vol. 5, p. 304.* The judgment creditors of a respondent allowed to defend an appeal.

71. On the death of a respondent, his judgment creditors, with reference to the interest they had in shewing that the contested property belonged to their debtor, were permitted to defend the appeal.—*S. D. A. Sel. Rep. 4th April 1812, vol. 7, p. 86.* Case in which the judgment creditors of a respondent on his death were allowed to defend the appeal.

72. Three respondents claiming a right to succeed to certain lands, were all permitted to defend the appeal against a fourth party, but were referred to a regular suit for the purpose of establishing their individual right of succession.—*S. D. A. Sel. Rep. 12th Sept. 1814, vol. 2, p. 126.* S. D. A. directs that a regular suit should be instituted to establish the individual right of succession.

73. A decree is passed in a Zillah court against several individuals, one of them appeals to the sudder court; the rest do not appeal; in deciding this appeal case, is the sudder court competent to take up the case as regards the whole of the persons against whom the zillah decree was passed, should it see reason to do so, or must its proceedings be confined to that part of the decree which affects the rights and interests of the individual appealing?—The Court rather incline to the latter opinion, but are desirous of learning the existing practice of the Calcutta Court before adopting it. The rule in such cases would of course be equally applicable to all other appeals, such as those tried by the Judge or Principal Sudder Ameen.—The Calcutta Court are of opinion that the appellate courts ought generally to confine themselves to the decision of the objections to the decree made by the parties who appeal; but that, where obviously requisite for the ends of justice, the jurisdiction of the appellate court may extend to all the interests affected by the decree.—*Con. 997, Cal. C. 2d, Hist. C. 22d Jan. 1836.* The appellate courts should generally confine themselves to the decision of the objections to the decree made by the party, though in case of necessity its jurisdiction may extend to all the interests affected.

74. Objections made in the lower court, by the defendant, to the valuation of the property sued for, cannot be tried by the appellate court unless a summary or regular appeal be preferred on that particular point.—*S. D. A. Sel. Rep. 2d Nov. 1816, vol. 7, p. 286.* Objections to the valuation cannot be tried, unless on a summary or regular appeal on that particular point.

## SECTION V.

### *Periods allowed for Appeals from Uncovenanted to Zillah Judges.*

75. And it is hereby enacted, that clause second, Section 2, Regulation 7, 1832, be repealed, and that in all cases in which an appeal from the orders or decision of a Principal Sudder Ameen to a zillah or city Judge is authorized by law, such appeal shall not be received, unless the same be preferred within the period of thirty days from the date of the order or decision of the said Principal Sudder Ameen, to be calculated according to the rules prescribed in clause ten, Section 8, Regulation 26, 1814, or unless it shall be proved, that the appellant was prevented by circumstances beyond his control from presenting his appeal within the abovementioned period.—*Act XXI. 1837. Sect. 9.* Repeals cl 2, sec 2, reg 7, 1832. Appeals from the orders of a P. S. A. to a zillah or city judge, must be preferred within 30 days from the date of the order, unless the appellant was prevented by circumstances beyond his control from presenting his appeal within that period.

76. The period for preferring an appeal from the decisions of a Sudder Ameen or Moonsiff, shall be limited as heretofore to thirty days, the respective periods in this instance as in the case of the appeals specified in the two preceding clauses, being calculated according to the rule laid down in clause tenth, Section 8, Regulation 26, 1814.—*Reg. 7, 1832. Sect. 2, Cl. 3.* Appeals from moonsiffs and S. A. must be preferred within 30 days.

The period of 30 days for appealing from moonsiffs' decrees will be reckoned from the date or tender of the decree.

77. The rule in Clause 3, Section 2, Regulation 7, 1832, for calculating the period within which appeals are preferable from the decisions of Sudder Amcens and Moonsiffs, not being applicable to the decrees of Moonsiffs which are not required to be written on stamped paper, the Courts of Sudder dewanny adawlut for the Lower and Western Provinces have ruled that the period of thirty days allowed for appealing from Moonsiffs' decrees shall be reckoned from the date of delivery, or tender of decree to the parties.—*Civ. Ord. 11th June 1845.*

Mode of admitting appeals from the decisions of moonsiffs

78. A discretionary power, however, is vested in the Judge of admitting appeals from decisions of the Moonsiffs, although the petitions may not be presented within the prescribed period if the appellant shall shew satisfactory cause for not having before presented the petition.—*Reg. 23. 1814, Sect. 16, Cl. 1.*

No appeal admissible from moonsiffs notwithstanding irregularity or error after the lapse of the prescribed period, without good and sufficient cause

79. The Court observe that the provisions of Clause 6, Section 45, Regulation 23 of 1814, were considered necessary to check irregularities, in the decisions of the Moonsiffs of the old system, but are inapplicable to those appointed under Regulation 5, 1831, who are considered to be persons of superior respectability and qualifications, and have on that ground been vested with higher powers. Their decisions have been placed by the general rules contained in Section 22 of that Regulation, and Section 7, Regulation 7, 1832, on the same footing as those of other courts, consequently in the opinion of the Court no appeal is admissible from them, notwithstanding any irregularity or error, after the lapse of the prescribed period unless good and sufficient cause be shewn for the delay which may have occurred in excess of that period.—*Con. 979, Cal. C. 11th Sept, West. C. 2d Oct 1835, par. 3.*

A zillah judge may admit an appeal from a S. A. after the prescribed period, on good and sufficient cause.

80. A zillah Judge is vested with discretionary power to admit an appeal from the decision of a Sudder Amcen, although the petition may not have been presented within the prescribed period, if the appellant shall shew satisfactory cause for not having presented it before.—*Con. 177, 18th April 1828.*

In calculating period for appeal, the full number of days or weeks should be allowed, exclusive of the day on which the month consists of 30 days, and the year of 12 months

81. To secure uniformity of practice regarding the mode of calculating the period within which an appeal should be lodged or any official act done, the Court desire it to be understood that when the period consists of days or weeks, the full number of days or weeks mentioned in the order should be allowed, exclusive of the day on which the order is passed; and that when a month or a year is mentioned, the month or the year should be reckoned according to the English calendar; that is to say, the month should not be invariably reckoned at thirty days, and the year should comprise twelve English calendar months.—*Civ. Ord. 1st March 1844.*

How the period for appealing from the orders of moonsiffs in miscellaneous cases should be calculated

82. Held, on a reference from the Judge of Allahabad, that the period allowed for appealing from the orders of Moonsiffs in miscellaneous cases, (copies of which orders are to be granted on plain paper,) should be calculated from the date of the order appealed from, deducting the interval that may elapse between the date of the copy being applied for, and its being ready for delivery.—The Moonsiffs should always note on the copy the date of application for the copy, and that of its being ready for delivery.—*Con. 1323, West. C. 26th March, Cal. C. 8th April 1842.*

Period for perfecting appeals, limited by the existing regulations to be calculated from the delivery, or tender, of the decree appealed from, to the appellant or his vakeel, as directed by the regulations.

83. It is hereby provided that the period of three months, which is limited by the existing Regulations for appeals from the decisions of the Zillah and City courts to the Provincial courts of appeal, and from the decisions of the latter courts to the Court of Sudder dewanny adawlut, as well as the period of one month limited for appeals from the decisions of the Registers and Native Commissioners to the Judges of the Zillah and City

courts, and the period of six months limited for receiving appeals from the judgments of the Courts of Sudder dewanny adawlut to His Majesty in Council, shall be calculated respectively, from the date on which a copy of the decree appealed from may have been delivered, or tendered in open court, to the appellant or his vakeel, as directed by the Regulations abovementioned; or, in the event of neither the party nor his vakeel being present to receive a copy of the decree, when ready to be delivered to him, the calculation shall be from the date on which the cause of the non-delivery of the decree may be noted upon the copy prepared for delivery, under the official signature of the Judge, Register, or Native Commissioner as provided for by the Regulations in such cases.—*Reg. 2, 1805, Sect. 8.*

84. The respective periods limited by the Regulations for the admission of appeals in such cases shall be calculated from the date on which the decision may have been passed; excluding from the calculation of such periods the interval, which may have elapsed in each instance between the date on which the requisite stamped paper may have been furnished by the party to the court, and that on which the copy of the decree may have been rendered or delivered to the party in open court in the mode prescribed by the Regulations. The courts will in all cases be enabled to ascertain such interval by the endorsements on the copy of the decree required to be made under clause ninth of this section.—*Reg. 26, 1814, Sect. 8, Cl. 10*

*Limitation of time for the admission of appeals how to be calculated in such cases*

85. The Court of Sudder dewanny adawlut have had before them your officiating Judge's letter, dated the 20th ultimo, with its Persian enclosure, stating that it has been the practice of your court, in calculating the periods limited for admitting regular appeals preferred direct to the court, not to allow the deduction of the interval, between a party furnishing the prescribed stamped paper in the Zillah court, and the copy of the decree being tendered or delivered to him, as prescribed by Clauses 7, 8, 9, 10, Section 8, Regulation 26, 1814, and stating also his opinion, that it was decidedly intended by Clause 10 to provide for the deduction in question.—In reply I am desired to observe, that the Court entirely concur with your officiating Judge in the construction which he has adopted, and that the deduction in question should be considered applicable to all, regular as well as summary and special appeals.—*Con. 113, 3d March 1826.*

*In calculating the period of appeal, the time between the date on which the stamped paper is given in, and on which the copy of the decree was given or tendered, must be deducted, be the appeal summary, regular, or special*

86. The legal period for the admission of appeals is to be calculated exclusive of the day on which the decree or order appealed against was passed. Should the last day allowed for the appeal fall on a Sunday, it may be admitted on the following day.—*Rep. Sum. Cases, 29th May 1813, p. 49.*

*The legal period of appeal is calculated exclusive of the day the decree or order was passed. If the last day falls on Sunday, the appeal will be admitted the next day.*

87. It is hereby declared, that the foregoing limitations shall be strictly adhered to notwithstanding the intervention of Hindoo or Mussulman holidays, or the established vacations, within the prescribed periods for preferring appeals. When such periods however may expire during an adjournment of the court, on account of any holiday or vacation, no default shall attach to the appellant, provided his petition of appeal be presented immediately on the re-opening of the court.—*Reg. 7, 1832, Sect. 2, Cl. 4.*

*The intervention of holidays not to hinder the observance of the above rules*

88. Held by the majority of the Western Court, in concurrence with the majority of the Calcutta Court, that a party having applied for review of judgment, under the provisions of

*On objecting a petition for review of judgment, the party is not entitled*



to a deduction of the time his petition was pending in the lower court in calculating the period of appeal, but the court may allow it.

Clause 2, Section 4, Regulation 26, 1814, in cases open to appeal, but in which no appeal may have been preferred, and such application having been rejected, is not entitled of right to the deduction of the time, during which his application for review was pending before the lower court, in calculating the period allowed him under the Regulations for preferring a regular appeal from the original decision: but that where such party may plead as the reason of his not having presented his petition of appeal within the period prescribed by law, that the case was pending before the lower court or on an application for a review of judgment, it will be the duty of the appellate court to take such plea into consideration, and to admit it or not, according as, under all the circumstances of the case, it might appear just and proper, in like manner with any other cause, assigned for delay.—*Con.* 1127, 2d Feb. 1838.

The fact of a case having been tried *ex-parte* is no reason for admitting an appeal after the prescribed period.

Rule for the guidance of a collector when he considers that there is any difficulty or objection to the execution of an order received from a civil court.

89. The fact of a case having been tried *ex-parte* in the lower court forms no ground for admitting the defaulter to appeal after the expiration of the prescribed period.—*Rep. Sum. Cases*, 19th July 1842, p. 35.

90. With advertence to the shortness of the period allowed under the existing law for the presentation of appeals in the Civil courts, the Sudder Board of Revenue are pleased to direct that whenever a Collector shall be of opinion that there is any legal difficulty or objection to the execution of an order received from a Civil court, he shall immediately instead of replying to the court, report the circumstances for the orders of the Commissioner, forwarding at the same time a draft of the appeal which he would propose to prefer to the superior court.—*Civ. Ord. Sud. Bd. Rev.* 3d Jan. 1843, par. 1.

Idem.

91. Should the Collector see reason to apprehend that the time limited for an appeal will have elapsed before he can receive the orders of the Commissioner, he will at once present to the superior court a formal petition of appeal, reserving the detailed statement of his objections until he shall have been furnished with the Commissioner's instructions.—*Ibid*, par. 2.

## SECTION VI.

*Power of the Zillah Court to confirm the Decisions of the Lower Courts, or to remand them for reconsideration, without summoning the Respondent.*

Rules regarding the conduct of appeals by the judge.

92. Whenever an appeal shall be preferred to a zillah or city Judge from the decision of any Moonsiff, Sudder Ameen, or Principal Sudder Ameen, it shall not be necessary to serve any process on the respondent in the first instance, and if, after the perusal of the record of the original suit and the petition of appeal in the presence of the appellant or his vakeel, the Judge shall see no reason to alter the decision appealed from, it shall be competent to him to confirm the same, and to communicate the order for confirmation, through the court from whose judgment the appeal was made to the respondent, with a view to enable such respondent to take immediate measures for the execution of the decree.—*Reg.* 5, 1831, Sect. 16, Cl. 3.

The judge is not required to read thro' every paper in each case, but such part of the misl, or record, as may be necessary to satisfy him of the cor-

93. Doubts appearing to be entertained as to the sense in which the word "record" in Clause 3, Section 16, Regulation 5 of 1831, is to be understood; I am directed to inform you that it has been ruled by the Courts of Sudder dewanny adawlut that the term in question does not refer to the *roobukar* of decision alone, but to the whole of the proceedings or *misl*. The

enactment, however, was not intended to require the Judge to read through every paper in each case, but merely such part of the misl or record of the original suit as may be necessary to satisfy him of the correctness of the judgment appealed from.—*Cir. Ord. Cal. and West. C. 19th Aug. 1836.*

94. It is hereby enacted, that it shall be lawful for a Judge of any Zillah or City court, within the territories subject to the Presidency of Fort William in Bengal, to exercise the powers vested in a single Judge of the Sudder dewanny adawlut, by Clause 2, Section 2, Regulation 9 of 1831, of the Bengal code.—*Act VII. 1838.*

95. In the trial of appeals, or on the hearing of any petition of appeal from the decision or orders of any court of inferior jurisdiction, if a single Judge of the Sudder dewanny adawlut shall be of opinion that no sufficient ground has been shewn to impugn the correctness or justness of such decision or order, it shall be competent to such single Judge, without reference to the order of the file, to confirm the same without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, as the nature of the case may appear to require. On the other hand, if a single Judge shall be of opinion, that the decision or order appealed against ought to be altered or reversed, as being manifestly unjust, or at variance with some Regulation in force, or in opposition to the Hindoo or Mahomedan law, or other law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue, it shall likewise be competent to a single Judge to issue an injunction pointing out the irregularity, illegality, or other defect apparent in the proceedings, decision, or order appealed against, and requiring that the court by which the same may have been held or passed shall revise the case, and proceed thereon, in such manner as may appear conformable to justice and to the Regulations.—*Reg. 9, 1831, Sect. 2. Cl. 2.*

96. The Judge, as soon as practicable, and as provided in Clause 2, Section 2, Regulation 9 of 1831, without reference to the order of the file, should then proceed in the presence of the appellant, or his vakeel, to revise the petition of appeal and such parts of the record as he may deem necessary; and if, upon a full consideration thereof he should see no reason to impugn the correctness or justness of the decision appealed from, he should confirm the same, and forthwith communicate the order for confirmation, as directed in Clause 3, Section 16, Regulation 5 of 1831, through the court, from whose judgment the appeal was made, to the opposite party, with a view to enable such party to take immediate measures for the execution of the decree.—*Cir. Ord. Cal. and West. C. 25th Sept. 1833, par. 5.*

97. An instance having been brought to the Court's notice in which it appears to be the practice, on the filing of a petition of appeal, for the Judge to issue a notice to the appellant requiring him, after the expiration of three days, to continue in attendance, and be present either in person or by vakeel on the day on which his petition may be taken up, under penalty of the case being dismissed or struck off the file, I am directed to request your particular attention to existing instructions, indicative of the proper course to be followed by the Judge in taking up petitions of appeal under Clause 3, Section 16, Regulation 5 of 1831, and Act VII. of

rectness of the judgment.

Judge of zillah or city court may exercise the powers vested in a single judge of the S. D. A. by cl. 2, sec. 2, reg. 9, 1831.

To confirm decisions in appeal where no sufficient ground has been shewn to impugn the decision appealed against.

Or to issue an injunction for a revision of the decision pointing out defects.

Course to be pursued by the judge if, on a full consideration of the petition & the record, he sees no reason to impugn the decision appealed from.

The judge, on the filing of the petition of appeal cannot order the appellant to attend either personally or by vakeel, on penalty of having his cause dismissed.

1838, when the petitioner may not be in attendance in person or by vakeel.—*Cir. Ord. Cal. and West. C. 23d Aug. 1839, par. 1.*

Course to be pursued by the judge in such cases

Nature of the decree he will pass.

Copies of the decree to be furnished on application.

The nature of the alteration introduced by cl 3, sec 16, reg 5, 1831. What is necessary to the admission of an appeal

98. In such cases, the Court observe, the order of the Judge, instead of merely stating the appeal of the appellant to have been rejected or dismissed, should go on to declare the decree of the lower court to have been confirmed. The Court do not, however, consider it necessary for the Judge to draw out a formal decree, by which term they mean a decree containing a recapitulation of the proceedings of the Court of original jurisdiction. It will be sufficient for him to record a brief order in confirmation of the decision appealed from, in which he should confine himself to a succinct abstract of the grounds urged by the appellant against the decision of the lower court, in order that, in cases, open to a special appeal, the court to which such appeal may be preferred, may see at once whether the appellant has brought forward any new pleas, not adduced before the Judge, or merely those which have already been over-ruled by that officer in the regular appeal. As such order must, however, be looked upon in the same light, and carry with it the same force as a regular decree, copies of it, when applied for by either of the parties, should be required to be taken on stamped paper of the same size and value as prescribed for copies of decrees of the Judge's court.—*Cir. Ord. Cal. and West. C. 28th Sept. 1838, par 6.*

99. You ask whether petitions of appeal from the decisions of Sudder Amceens and Moon-siffs are to be considered as miscellaneous petitions, until the Judge, after the perusal of the decree and other papers, shall determine that it shall be admitted, and a notice be served on the respondent, and shall direct that the appeal be brought on the file. On this point I am directed to observe, that the rule contained in Clause 3, Section 16, Regulation 5, 1831, alters the rules before in force no further than to allow the Judge to confirm the decision of the lower court, without calling on the respondent to attend : consequently, the same mode of practice is to be followed as heretofore, except that as no costs can be incurred by the respondent until he be summoned to answer to the petition of appeal, security for costs need not be demanded from the appellant before the respondent is called upon to answer. A previous perusal of the petition of appeal and decree is not necessary to the admission of the appeal : nothing further being required than to see that the prescribed period of appeal has not expired, and that the petition of appeal is written on paper bearing the prescribed stamp. The practice therefore adopted by you in the disposal of such petitions is erroneous.—*Cir. Ord. Cal. and West. C. 24th Aug. 1832.*

Before the petition of appeal has been read by the judge, the appellant cannot bring additional proof of his claim.

The confirmation of the decision of the lower court prior to perusing the original proceedings, is a final dismissal of the appeal on consideration of its merits

100. I am directed to inform you that an appellant should not be allowed to bring forward additional proof in support of his claim, before the petition of appeal and decree had been read over by the Judge.—*Con. 790, West. C. 10th May, Cal. C. 7th June 1833.*

101. All first appeals must be admitted as a matter of right, provided they be preferred within the period prescribed by the Regulations ; so that the confirmation of the decision of the lower court, prior to a perusal of the original proceedings, is to be considered, not as a rejection but a final dismissal of the appeal on consideration of its merits.—*Con. 742, Cal. and West. C. 14th Dec. 1832.*

Appeals decided under cl 3, sec 16, reg. 5, 1831, are regular appeals, decided on their merits after the perusal of the re-

102. I am directed by the Court to acknowledge the receipt of your letter of the 2d instant, requesting the opinion of the Court regarding cases of appeal decided under the provisions of Clause 3, Section 16, Regulation 5, 1831.—In reply to your first question, I am directed to inform you that appeal cases so disposed of should be viewed as regular appeals,

decided on their merits after a perusal of the record, as required by the Regulation, and should be entered as such in the monthly statements.—*Con. 878, West. C. 11th April, Cal. C. 2d May 1834.*

103. It is incompetent to an appellate court to confirm on its merits a judgment appealed against, without having on record the objections or reasons of appeal of the appellant.—*Rep. Sum. Cases, 13th June 1813, p. 50.*

An appellate court cannot confirm on its merits a judgment appealed against without having on record the objections, or reasons of appeal, of appellant.

## SECTION VII.

### *Rules regarding Stamps, and Vakeel's Fees, in Appeal Cases decided without summoning the Respondent.*

104. With reference to the provisions of Section 2, Regulation 9, 1831, the following rules of practice are agreed to by the Court — *Con. 675, Cal. and West. C. 17th Feb. 1832, par. 1.*

Rules of practice with reference to sec. 2, reg. 9, 1831.

105. The Court are of opinion that if the decision of the lower court be confirmed without the attendance of the opposite party, the appellant is not entitled to receive back any proportion of the value of the stamped paper on which his petition of appeal is written; and that the appellant's vakeel is entitled to the whole of the fees deposited by the appellant.—*Con. 675, Cal. and West. C. 17th Feb. 1832, par. 3.*

Where the decision of the lower court is confirmed without the attendance of the opposite party, the appellant will not receive back the stamp, and the vakeel will receive the whole fee.

106. If the attendance of the opposite party shall be required, and the said party shall, nevertheless, file an answer to the petition of appeal through a vakeel of the court, the fee of the said vakeel shall be payable by the opposite party himself.—*Ibid, par. 4.*

If the attendance of the opposite party is required, and he files an answer, he must pay the vakeel

107. If an injunction be issued for a revision of the decision, the Court are of opinion, that in conformity to the rule prescribed in Section 8, Regulation 19, 1817, the stamp duty paid by the appellant on his petition of appeal should be returned to him, and the fees of the vakeel of the appellant and respondent (if attending) limited to a sum not exceeding one-fourth of the established fee.—*Ibid, par. 5.*

If there be an injunction for the revision of the decision, the stamp duty will be returned, and the vakeels on both sides will receive a quarter the established fee

108. The vakeels are entitled to the full remuneration awarded them by the Regulations in cases regularly decided on their merits under the provisions of Regulation 5, 1831, Section 16, Clause 3.—*Con. 878, West. C. 11th April, Cal. C. 2d May 1834, par. 3.*

The vakeels are entitled to full fees in cases decided on their merits under reg. 5, 1831, sec. 16, cl. 3

109. No portion of the stamp duty should be returned in such cases.—*Ibid, par. 4.*

But the stamp fees will not be returned

110. The Court having had instances before them in which the zillah Judges, on confirming in appeal the decision of the lower court without summoning the respondent, have ordered the appellant to pay the respondent's costs, and respondent's vakeel to receive from the treasury the amount of his fees in deposit, direct me to take this opportunity of observing, that such order is irregular. On this point I am desirous to call your attention to the Court's Circular letter of the 24th August, 1832, No. 60, which expressly declares that as no costs need be incurred by the respondent until he be summoned to answer the petition of appeal, it is not necessary to demand security for costs from the appellant before the respondent is called upon to answer. [Security for costs are no longer necessary. Vide Act III. 1845.]—*Cir. Ord. Cal. and West. C. 28th Sept. 1838, par. 8.*

The zillah judges, on confirming the decision of the lower court in appeal cannot order the appellant to pay the respondent's costs, or the respondent's vakeel to receive the fee deposited

If the respondent attends voluntarily in person, or by vakeel, he must do so at his own cost

The cost incurred by the appellant in the appeal should be specified at the foot of the judge's order

111. It is not, of course, intended by the foregoing remark to prohibit the attendance of the respondent either in person, or by vakeel, during the perusal of the petition of appeal in cases of the above description, but merely to point out that when he may attend of his own accord he must do so at his own cost, defraying himself any expences he may incur either in providing himself with a vakeel or otherwise, and which cannot be charged to the appellant, and any mention, therefore, in regard to the payment of costs is unnecessary ; though it would be proper to specify, at the foot of the Judge's order, the cost incurred by the appellant in the appeal, and which necessarily fall on him in the first instance, so that in the event of the decision of the Judge's court being reversed or modified on a special appeal, provision may be made for the payment of the same.—*Civ. Ord. Cal. and West. C. 28th Sept. 1838, par. 9.*

### SECTION VIII.

#### *Reference of Appeals from the Decisions of Moonsiffs and Sudder Ameens to Principal Sudder Ameens.*

In modification of these rules, whenever the number of appeals before the judge is heavy, he may obtain permission from the S. D. A. to refer a specified number to the P. S. A.

112. In modification of this provision, however, it is hereby enacted, that it shall not be competent to a zillah or city Judge to refer any appeal for trial to a Sudder Ameen, even though he may have been specially empowered under the rule above cited ; but whenever it may appear to any such zillah or city Judge that his file is so heavy as to make it impracticable for him to dispose of all the appeals which may be pending with reasonable despatch, he shall make a special report of the case to the Sudder dewanny adawlut, soliciting permission of that authority to refer such specified number of appeals from the decisions of Moonsiffs or Sudder Ameens, as he may deem necessary for trial, to the Principal Sudder Ameen attached to his court, to be appointed under the rules prescribed in Section 17 of this Regulation, in which case it shall be competent to the Court of Sudder dewanny adawlut to comply with the application for the transfer, and the rules prescribed in the preceding clause [Clause 1.] shall be held applicable to such appeals.—*Reg. 5, 1831, Sect. 16, Cl. 2.*

*The Rules thus referred to are those in Regulation 24, 1814, Section 7, Clause 4, and Section 9, Clause 1.*

Rules originally passed for the trial of appeal cases by the S. A. when referred to him

113. [Regulation 24, 1814, Section 7, Clause 4, ordains that in the trial of such appealed suits, the Sudder Ameens shall be guided by Regulation 23, 1814, Section 75, and that their decisions shall be final, unless the zillah Judge see cause to admit a second or special appeal. [Special appeals can only be admitted by the Sudder dewanny adawlut.]—Regulation 23, 1814, Section 75, directs that the Sudder Ameens shall keep a separate register of the suits thus referred to them in appeal, and not confound them with those referred to them for trial in the first instance ; and that the Sudder Ameens shall try such appeals in conformity with the rules prescribed for the trial of appeals by the zillah Judges ]

Rules regarding the trial of appeals by the register

114. [Regulation 24, 1814, Section 9, Clause 4, ordains that the Register shall try suits referred to him in appeal by the zillah Judge, and that his decision shall be final, unless the zillah Judge should see sufficient reason for admitting a second or special appeal.]

115. The zillah and city Judges are expected, as far as may be practicable and consistent with their other duties, to revise all appeals from the decisions of the Sudder Amceens and Moon-siffs, or to retain a certain portion of the decisions passed by each officer on their own files, with a view to maintain a proper check over their proceedings. Whenever, however, the accumulation of the petitions of appeal from the decisions of Moonsiffs and Sudder Amceens, or the general arrears of business depending in any Zillah and City court, may render it impracticable for the Judge of that court to revise these appeals with sufficient promptitude and despatch, the Judge will from time to time obtain the sanction of the Court of Sudder dewanny adawlut, agreeably to Clause 2, Section 16, Regulation 5, 1831, and in the form prescribed by Circular order of 19th October, 1832, to refer, as may appear necessary and proper, a specified number of these cases to the Principal Sudder Amceen attached to his court for trial.—*Co. Ord. Cal. and West. C. 6th Feb 1835, par. 2.*

The judge is expected as far as practicable to revise all appeals from the decisions of S. A. and motions.

When this is impracticable, he may apply to the S. D. A. for leave to refer them to the P. S. A.

116. In submitting such applications the Judge will accompany the same with a statement in the following form, and when he may have retained any original suits on his own file, he will state his reasons for so doing, instead of making them over, according to their amount or value, to the subordinate judicial functionaries of his district.

Form of statement to be submitted by the judge with such applications. When he retains original suits on his file, instead of referring them to the lower courts, he will state his reasons for so doing.

*Before the Judge*

	<i>Number</i>
Original suits, .....	...
Appeals from the decisions of Collectors and Principal Sudder Amcons, ..	..
Appeals from the decisions of the Sudder Amcons, .....	...
Appeals from the decisions of Munsiffs, .....	...
Miscellaneous cases, .....	...
Total, ...	...

*Before (name) Principal Sudder Amen*

[If there be more than one, the state of the file of each must be given separately.]

Original suits exceeding in value 1,000 rupees	...	.	...	...
Original suits not exceeding 1,000 rupees (with a brief statement of the reasons of their not being referred to the lower courts.)	...	...	...	..
Appeals from the decisions of the Sir Kler Ameen,	.	.	.	...
Appeals from the decisions of Moon-shis,	...	...	...	..
Miscellaneous cases,	..	..	...	...
	...	...	..	...
Total,	<hr/>			

--Co. Ord Cal. C. 7th, West. C. 21st Dec. 1858.

117. It is not considered by the Court indispensable that the zillah or city Judge should in every case, peruse the record of the original suit and the petition of appeal, or in any way revise the proceedings previous to the transfer of these cases to the Principal Sudder Ameen, whose judgments will be of course open to a special appeal to the Judge, provided there shall appear sufficient reason for such a proceeding, under the rules of Section 2, Regulation 26, 1814, and other provisions applicable to the admission of special appeals.—*Co. Ord. Cal. and West. C. 6th Feb. 1835, par. 3.*

But it is not indispensable that the judge should in every case preserve the record of the original suit and petition of appeal, before he transfers them to the P. S. A.

The S. A. cannot try appeals, nor can the P. S. A. unless they are transferred to him by the judge.

*Idem.*

Rules to be observed by P. S. A. in the trial and decision of cases that come before them.

A P. S. A., trying an appeal from a moonsiff, may remand the case for further investigation. Cause to be pursued if the moonsiff has improperly nonsuited the case.

Rules regarding the trial of appeals from moonsiff's decision by the P. S. A.

When the P. S. A. is of opinion that the decision should be annulled, and the case tried *de novo*, he will record his opinion, and submit it to the judge.

The judge, after considering the opinion of the P. S. A., will return him the case, either to be remanded to the lower court, or to be disposed of by him.

This does not preclude the P. S. A. from ordering the lower court to make further investigation.

Entry to be made by the judge in his statements when he sanctions the remanding of the case.

118. After the promulgation of Regulation 5, 1831, Sudder Ameens cannot try appeals. Nor can the Principal Sudder Ameens, unless the appeals have been transferred to those officers by the Judge with the sanction of the Sudder dewanny adawlut.—*Con. 676, 24th Feb. 1832.*

119. No appeals are cognizable by a Principal Sudder Ameen but those which may have been referred to him by the Judge with the sanction of the Sudder dewanny adawlut.—*Ibid.*

120. In the trial and decision of original suits and appeals referred to them, the Principal Sudder Ameen shall be guided by the rules established for the conduct of business in the courts of the Sudder Ameens. And in points not expressly provided for by those rules, they shall observe as nearly as may be practicable the rules prescribed in the Regulations for the guidance of the Zillah and City courts.—*Reg. 5, 1831, Sect. 18, Cl. 4.*

121. The Court are of opinion that a Principal Sudder Ameen, authorized to try appeals from the decisions of Moonsiffs, may refer a case to a Moonsiff for further investigation. Should he be of opinion that a Moonsiff has improperly nonsuited a case, he should return it to the Judge with his opinion that the Moonsiff should be directed to re-admit it and try it on its merits.—*Con. 1023, Cal. C. 8th July, West. C. 5th Aug. 1836.*

122. It having been ruled by the Court that Principal Sudder Ameens, in trying appeals from the decisions of Sudder Ameens and Moonsiffs, referred to them by the Judge with the sanction of the Court of Sudder dewanny adawlut, have no authority to remand the cases back to the courts by which they were originally determined, for re-trial and restoration to their former number on the file, I am directed to convey to you, for your information, and for communication to the Principal Sudder Ameens subordinate to you, the following directions.—*Cal. Ord. Cal. and West. C. 14th June 1839, par. 1.*

123. Whenever, in the trial of appeals of the nature above described, a Principal Sudder Ameen may be of opinion that the decision of the lower court should be annulled, and the suit remanded, with a view to its being replaced on the original file and tried *de novo*, he shall record the ground of his opinion in a proceeding, and submit it with the papers of the suit for your orders, retaining it in statement No. 1 of his court.—*Ibid, par. 2.*

124. On the receipt of such applications, you will enter the reference under heading No. 16, column 3, Statement No. 2 of your court, and after a consideration of the grounds set forth in the proceedings of the Principal Sudder Ameen, you will return the case to that officer with directions either to remand it to the court by which it was originally decided, or to dispose of it himself.—*Ibid, par. 3.*

125. This rule is not to be considered to preclude the Principal Sudder Ameen from directing the lower court to make any further investigation which he may consider requisite, with a view to his deciding the suit himself.—*Ibid, par. 4.*

126. In the event of your sanctioning the remand, the case should be entered in column 9, Statement No. 1, of the Principal Sudder Ameen, and also in column 4, Statement No. 1, of the Court of first instance, as prescribed in the remarks on column 4, Statement No. 1, on the subject of "Cases remanded for re-trial," contained in the rules accompanying the Circular orders of the 21st December last.—*Ibid, par. 5.*

127. It having been brought to the notice of the Court, that some of the Principal Sudder Ameens, in disposing of appeals from the decisions of Sudder Ameens and Moonsiffs, referred to them for trial under the provisions of Clause 2, Section 16, Regulation 5, 1831, have been in the habit of exercising, at their discretion, the powers vested in the Judge by Clause 3 of that Section; I am directed to inform you that it has been ruled by the two Courts of Sudder dewanny adawlut, that Clause 3 of the section cited is not applicable to appeals referred for trial to the Principal Sudder Ameen under the preceding clause, and to request that you will prohibit the practice, if it obtains in the district under your control.—*Cir. Ord. West. C. 17th March, Cal. C. 21st April 1837.*

The P. S. A., in disposing of appeals referred to him, cannot exercise the powers vested in the judge by reg. 5, 1831, sec. 16, cl. 3

128. A Principal Sudder Ameen cannot confirm a decision in appeal without summoning the respondent.—*Com. 796, West. C. 14th June, Cal. C. 5th July 1833.*

A P. S. A. cannot confirm a decision in appeal without summoning the respondent.

129. In the trial of original suits and appeals, the Principal Sudder Ameens are enjoined to conform strictly to the mode of procedure directed to be observed by Section 10, Regulation 26, 1814, before any exhibits are filed or witnesses summoned in support of the allegations of either of the parties.—*Reg. 5 1831, Sect. 21.*

Rules in sec. 10, reg. 26, 1814, to be observed by P. S. A.

130. I am directed by the Court to acknowledge the receipt of your letter of the 24th ultimo, and in reply to inform you that as the provisions of Clause 2, Section 11, Regulation 2, 1821, have been extended by Section 17, Regulation 7, 1832, to Principal Sudder Ameens and Sudder Ameens stationed at other places than the station of the Zillah or City court; and as it has been declared by the Circular order of 6th February, 1835, not necessary for the Judge to revise all appeals prior to their being referred for trial to a Principal Sudder Ameen, the Court are not aware of any objection to your authorizing the Principal Sudder Ameen at Furreedpore to receive appeals, as well as original suits, in the manner prescribed by the clause above cited.—*Cir. Ord. Cal. C. 18th Sept. 1835, West. C. 22d Jan. 1836.*

The P. S. A. at Furreedpore is authorized to receive appeals, as well as original suits

## SECTION IX

### *Proceedings on the Hearing and Determination of Regular Appeals.*

131. Such parts of the Regulations in force as require that the pleadings in appealed suits be conducted and filed in the same manner and under the same rules as pleadings in original suits, are hereby declared subject to the following modifications.—*Reg. 26. 1814, Sect. 9, Cl. 1.*

Modification. of rules regarding pleadings in appeals

132. In all regular civil suits which may be appealed subsequently to the 1st of February, 1815, to a Zillah or City court, to a Provincial court, or to the Sudder dewanny adawlut, it shall be left to the option of the respondent either to file an answer to the petition and reasons of appeal, or not, as he may judge proper; provided however, that if no answer shall be filed by a respondent, it shall be competent to the court trying the appeal, in all cases, in which it may be deemed expedient, to direct the respondent to file an answer to the petition of appeal, or to any particular points in it, which may appear to require an answer or explanation.—*Ibid. Cl. 2.*

The respondent may file an answer to the reasons of appeal or not at his option.



No further pleadings beyond the answer to be admitted with certain exceptions

133. No further pleadings beyond the answer of the respondent shall be admitted in any appealed suits, which may be instituted subsequently to the 1st February, 1815, except the duplicate of the plaint provided for by Clause first, Section 7 of this Regulation, or such supplemental pleadings as may be authorized by the court under the provisions of Clause third, Section 6 of this Regulation.—*Reg. 26, 1814, Sect. 9, Cl. 3.*

Reg. 26, 1814, sec. 14, is not applicable to cases of appeal

134. Held by the Calcutta Court, in concurrence with the Western Court, that Section 12, Regulation 26, 1814, is not applicable to cases of appeals, but only to original suits.—*Con. 1191, 14th Dec. 1838*

In all appealed cases forwarded to the subordinate court, the judge is strictly ordered to send up the proceeding which he is required to draw up by reg. 26, 1814, sec. 10.

135. Several instances having lately been brought to the notice of the Court of the record of appealed cases, submitted agreeably to the rule contained in Section 8, Regulation 9, 1831, being sent up without the proceeding which the Judge is required to draw up by Section 10, Regulation 26, 1814, and the omission being extremely inconvenient, particularly where the appellant pleads that the Judge has omitted to receive documents tendered, or to summon witnesses named by the party, I am directed to request that you will invariably submit that proceeding in all appealed cases that you may forward to the court.—*Ch. Ord. Cal. and West. C. 5th Aug. 1836.*

That section applies to appeals, as well as to original cases, and the judge will record the precise points at issue, and the grounds alleged by the parties.

136. You will not fail to observe, that the rules laid down in Section 10, Regulation 26, 1814, apply to the trial of appeals, as well as of original suits; and you will be careful therefore in all cases to record on your proceedings the precise points at issue, and the grounds on which the parties maintained their several pleas.—*Ch. Ord. 2d Oct. 1840 par. 3.*

Cases in which the provincial court of appeal are empowered to take evidence in appeals, or to refer them for further evidence to the Zillah or City courts.

137. The Provincial courts of appeal are empowered in cases of appeals in which it shall appear to them that the original suit has not been sufficiently investigated in the Zillah or City court, or for any other cause that may be deemed reasonable by the Provincial court, either to receive such further evidence as they may think necessary for the just determination of the suit, and to give judgment upon it, or to refer the suit back to the Zillah or City court in which it originated, accompanied by such special directions to the Judge with regard to the new evidence he is to receive respecting it, as may be deemed by the court most conducive to justice, and the convenience of the parties and witnesses. But in every case in which the Provincial courts may exercise the power above vested in them by this section, they are to enter upon the record of the trial their reasons for having exercised it. In cases in which the court may judge it proper to receive such further evidence themselves, they are empowered, according as they may deem most conducive to justice (respect being had to the nature of the cause, and the evidence), either to examine the witnesses to be produced, viva voce, in open court, causing the witnesses to be first sworn, and their depositions to be reduced into writing, and signed by the deponents respectively; or, to authorize their Register to swear the witnesses and take their depositions, and to cause the deponents to sign them and to authenticate them with his signature. The Register in such case, is to examine the witnesses in the presence of both parties or their vakeels, who are to be at liberty to put any questions to the witnesses that they may think proper, and the questions, with the answers to them are in the same manner to be reduced into writing, signed, and authenticated. But if due notice be given to the parties or their vakeels, of the examination of any witness or wit-

Provincial courts to state their reasons upon the record of the trial whenever they may exercise the powers above vested in them.

Courts empowered to hear the evidence in the cases above specified viva voce, or to order their Register to take it.

nesses before the Register, and he or they shall not attend at the time of the examination, the Register is to proceed in the examination as before directed, and the depositions are to be received as good and authentic evidence.—*Reg. 5, 1793, Sect. 18.*—*Benares Reg. 9, 1795, Sect. 6.*—*Cal. and Cong. Prov. Reg. 1, 1803, Sect. 18.*

138. [In the trial and decision of appeals by the Zillah court or the Principal Sudder Ameen they will proceed in the same manner as far as may be applicable, and with the like powers, and authority, and subject to the same restrictions and limitations, as are prescribed for the trial and determination of original suits, and the decrees will be prepared and copies of them made, and delivered or tendered to the parties in the same manner as is directed in original suits.] Made in which the Zillah judges and the P. S. A. will proceed in the trial and decision of appeals.

139. The petition of appeal, pleadings, depositions and exhibits in the Provincial courts of appeal, are to be numbered, marked, dated, and signed by the Register in the same manner as the complaint, pleadings, depositions and exhibits are ordered to be numbered, marked, dated, and signed by the Register in the Zillah and City courts.—*Reg. 5, 1793, Sect. 29.*—*Benares Reg. 9, 1795, Sect. 6.*—*Cal. and Cong. Prov. Reg. 4, 1803, Sect. 29.* Proceedings in the provincial courts how to be numbered, marked, dated, and signed.

140. To prevent in abuse of the above rule, and the encouragement of litigious appeals the Provincial courts of appeal in all cases wherein they may confirm the decree of a Zillah or City court, and the Sudder dewanny adawlat in all cases wherein it may confirm the decree of a Provincial court, are to adjudge interest at the rate of one per cent, on all sums receivable by the respondent under the decree passed in his favor, from the date of such decree, and are authorized to punish appeals which may prove to them litigious by a fine to Government proportionate to the condition of the appellant, and the circumstances of the case.—*Reg. 13, 1796, Sect. 3.*—*Cal. and Cong. Prov. Reg. 5, 1803, Sect. 12.* Interest to be allowed on sums adjudged by the decree of the provincial courts in all cases wherein it may confirm the decree of a Provincial court.

141. If the decision shall be confirmed in appeal, the appellate court must, under Section 3, Regulation 13, 1796, award interest from the date of such decree to the day of payment on the aggregate of the principal, interest, and costs awarded by the original decree.—*Cal. and West. C. 4th March 1836, par. 3.* Averment of interest to be awarded if the decision be confirmed in appeal.

142. As the law now stands, in cases coming under the provisions of Section 12, Regulation 3, 1793, the party fined is liable to be committed to the custody until the amount be paid, but where the fine may be imposed for a litigious appeal in conformity to Section 3, Regulation 13 of 1796, the amount, if not immediately forthcoming, should be realized under the same rules as are applicable to the execution of decrees of court.—*Cal. 1096, Cal. and West. C. 7th July 1837.* Where the fine of interest is imposed for a litigious appeal, the amount to be realized under the rules applicable to the execution of decrees of court.

143. In like manner, if the claim was dismissed by the lower, but decreed by the appellate court, interest shall be calculated on the principal sum to the date of the decision of the lower court as before, and on that consolidated sum of principal and interest and the costs of suit to the day of payment.—*Cir. Ord. Cal. and West. C. 4th March 1836, par. 1.* Amount of interest to be decreed if the claim was dismissed by the lower, but decreed by the appellate court.

144. Claim by respondent to interest, during two appeals, on the amount of a zillah decree, passed in his favor, and confirmed in each appeal: claim adjudged.—*S. D. A. Sel. Rep. 18th Aug. 1806, vol. 1, p. 154.* Particular case of a claim by respondent to interest during two appeals.

An appellate court cannot fine a respondent for having instituted a suit in the lower court which the appellate court deems vexatious.

145. An appellate court is not competent to impose a fine on the respondent in an appeal case for having instituted in the lower court a suit which the appellate court may consider to have been vexatious.—*Cir. Ord. Cal. and West. C. 25th Jan. 1833, par. 5.*

## SECTION X.

### *Dismissal of the Appeal on Default.*

Court to dismiss appeals, if the appellants omit to proceed in six weeks, without shewing sufficient cause for the omission.

Reasons for the dismissal of the appeal to be recorded.

146. If the appellant in an appeal filed in the Provincial courts of appeal shall not proceed in the appeal for six weeks, the appeal is to be dismissed, unless the appellant shall show reasonable cause to the satisfaction of the court for not proceeding in it; and the court may, if they shall deem it equitable so to do, award to the respondent costs of suit. But in all such cases, the Court are to enter at large upon their proceedings the grounds upon which they may permit or refuse to allow the appellant to proceed.—*Reg. 5, 1793, Sect. 21.—Benares Reg. 9, 1795, Sect. 6.—Ced. and Com. Proc. Reg. 4, 1803, Sect. 21.*

Plaintiff or appellant neglecting to proceed for six weeks, suit or appeal to be dismissed, without previous notice, unless further time has been previously obtained on special grounds. The court shall record its reasons for giving further time, but not for refusing it.

147. It is hereby enacted, that if a plaintiff or appellant in any court shall, at any time, neglect to proceed in his suit or appeal for six weeks, the suit or appeal shall be dismissed; and it shall not be necessary to give the plaintiff or appellant any notice previous to dismissing his suit or appeal. The suit or appeal shall be dismissed as of course after the expiration of six weeks without any proceeding on the part of the court, or of the defendant, or otherwise, or assignment of any reasons, unless the plaintiff or appellant, or his representative in case of his death, upon special application, shall have previously satisfied the court of the propriety of allowing further time. The court shall record upon the proceedings the reasons at large for allowing further time in all cases in which further time may be allowed, but it shall not be necessary to specify the reasons for refusing any application for further time.—*Act XXIX. 1811 Sect. 1.*

Defendant or respondent to have costs if suit or appeal is dismissed.

148. And it is hereby enacted, that in all case in which a suit or appeal is dismissed under the preceding section the court shall award to the defendant or respondent the costs he may have incurred in the suit or appeal. But such dismissal shall be no impediment to the institution of a new suit or appeal, where the party is not precluded by lapse of time, or period of appeal, or otherwise than by the mere circumstances of having instituted the suit or appeal dismissed and of such dismissal, and such dismissed suit or appeal shall not prevent lapse of time under the law of limitations being incurred.—*Ibid, Sect. 2.*

Act 29, 1811, applies to all suits pending on the file at the promulgation of the act.

149. With reference to the provisions of Act XXIX. of 1811, I am directed to observe that you should consider them as applicable to all suits pending on your file at the date of the promulgation of the Act, in which parties may neglect to proceed with them for a period of six weeks from such date, which is to be calculated from the day of the

receipt in your office of the *Calcutta Gazette* containing the Act, or of the printed copy of the Act itself, as the case may be. The Act will of course apply to all suits instituted after the date of its promulgation. You are requested to lose no time in making the Native Judges acquainted with the foregoing orders.—*Cir. Ord. 24th Dec. 1841.*

150. In cases in which the petition of appeal is filed in the Sudder dewanny adawlut, the date of institution of the appeal must of course be calculated from the day of filing the petition. In cases, however, in which the petition of appeal is presented to the Court of original jurisdiction, the date of institution must be calculated under Section 3, Regulation 12, 1797, from the date of the filing of the petition of appeal in the Sudder court, that is, from the date of the petition reaching the court. From the date of institution in either case, as above stated, the appellant must, under the provisions of Section 1, Act XXIX. 1841, proceed within six weeks. The question arises, what is "*proceeding with a case*?" Ruled, that the appellant must be held to have defaulted, and be liable to dismissal of his appeal unless he appears in person or by vakeel, and files his reasons of appeal within the term (six weeks) allowed, and that the mere appointment of a vakeel could not suffice to bar the liability referred to.—*Con. 1315, Cal C. 31st Dec. 1842, West. C. 7th Jan. 1842.*

Manner in which the date of the institution of the appeal must be calculated.

From that date the appellant must proceed within six weeks.

If the appellant does not file his reasons of appeal in six weeks from that date, he will be held to have defaulted.

The mere appointment of a vakeel does not bar the dismissal of his appeal.

151. Held, on a reference from the Judge of Cawnpore, in adoption of the rule of Circular order of the Sudder dewanny adawlut, No. 25, dated 7th January, 1831, that the interval of the established vacations must not be allowed to be deducted in the calculation of the period beyond which default is incurred under Act XXIX. of 1841.—*Con. 1368, West. C. 2d, Cal. C. 23d Dec. 1842.*

The interval of the established vacations must not be deducted in calculating the six weeks beyond which default is incurred.

152. With advertence to that part of Act XXIX. of 1841, which makes the institution of a new appeal, after dismissal on default under Section 1, conditional on the party not being precluded by "lapse of time and period of appeal"—It was held on a reference from the Judge of Furruckabad, that the law being general, refers to all appeals; and that, consequently, if an appellant to the zillah Judge default under Act XXIX. 1841, and his case is, in accordance with its provisions, struck off, his appeal is lost.—*Con. 1334, West. C. 15th April, Cal. C. 27th May 1842.*

If an appellant default under act 29, 1841, and his case is accordingly struck off, his appeal is lost.

153. Neglect of an order issued in the progress of a suit, which is otherwise carried on, is not a default under Act XXIX. 1841.—*Rep. Reg. Cases, 10th May 1847.*

Neglect of an order issued in the progress of a suit which is otherwise carried on, is not a fatal default.

154. Held, that the failure of the plaintiff to reply to the answer of one defendant, within the prescribed time, while the case was proceeding without neglect or default in regard to other defendants, does not constitute the neglect involving dismissal of the action under Act XXIX. 1841.—*S. D. A. Sel. Rep. 7th Feb. 1846, vol. 7, p. 226.*

The mere failure of the plaintiff to reply to one out of many defendants, does not involve dismissal under act 29, 1841.

155. A mere omission to do a particular act, while the plaintiff is otherwise engaged in carrying on his suit, does not incur the penalty of dismissal under Act XXIX. 1841.—*Rep. Sum. Cases, 11th May 1847.*

Mere omission to do a particular act, while the plaintiff is proceeding with his suit, does not incur the penalty of dismissal under act 29, 1841.

156. A suit cannot be dismissed both on its merits, and on account of default under Act XXIX. 1841.—*Rep. Sum. Cases, 31st July 1847.*

A suit cannot be dismissed both on its merits and on default.

157. An appeal struck off under Act XXIX. 1841, cannot be revived except within the

Within what time

an appeal struck off under act 29, 1841, can be revived.

Decision of a particular case under act 29, 1841

The absence of a pleader on leave not bar to the dismissal of a case under act 29, 1841

When an appeal has been dismissed under act 29, 1841, the opposite party will not be entitled to recover his costs, if he appears without having been duly summoned as a respondent.

When the receiver of the Supreme Court has been changed, it is not necessary to issue a fresh notice.

Provision in act 29, 1841, relative to the representative of an appellant, in case of his death, which is not previously notified either time from the court

The Sudder Courts, consider that although the courts are not directed to notify to the heirs of the appellant, the fact of his decease, they are not prohibited from doing.

Reasons of justice, equity and good conscience for granting the courts permission thus to notify the fact of decease to the heirs, that they may not lose the right of

time first allowed for appealing from the decree of the court whose judgment is appealed against.—*Rep. Sum. Cases, 17th April 1843, p. 48.*

158. One of two appellants having demised, and his heir, after appearing, having defaulted, the zillah Judge struck off the appeal under Act XXIX, 1841. The Sudder dewanny adawlut held that the Judge was bound to hear the appeal on its merits, *quoad* the appellant who had not defaulted.—*Rep. Sum. Cases, 3d July 1843, p. 50.*

159. The absence on leave of a pleader engaged in a cause, is no bar to its dismissal under Section 1, Act XXIX, 1841.—*Rep. Sum. Cases, 2d Aug. 1842, p. 36.*

160. The Judge of Moradabad having enquired, whether with reference to the comprehensiveness of the wording of the provision contained in Section 2, Act XXIX, 1841, viz. "in all cases in which a suit or appeal is dismissed," costs are required to be awarded to respondents who shall have made answer and appointed a vakeel, without having been first summoned to defend an appeal, when such appeal may be dismissed under the Act in question: It was held, that the contingency of the opposite party appearing without being summoned did not appear to be comprehended in the rule adverted to by the Judge, in as much as till the said party be called on to "respond" he cannot in the strict meaning of the word be termed a "respondent." The Judge was further referred to Construction No. 675, in which the designation is accordingly restricted to "opposite party"—*Con. 1327, West. C. 15th Feb, Cal. C. 4th March 1842.*

161. It is not necessary to issue, to the new officer, fresh notice in a case to which the Receiver of the Supreme Court may be a party, on change of the official incumbent.—*Rep. Sum. Cases, 18th March 1845, p. 66.*

162. Section 1, Act XXIX, of 1841, enacts that a "suit or appeal shall be dismissed as of course, after the expiration of six weeks without any proceeding on the part of the court or of the defendant or otherwise, or assignment of any reasons, unless the plaintiff, or appellant, or *his representative in case of his death*, upon special application, shall have *previously* satisfied the court of the propriety of allowing further time."—*Co. Ord. 5th Sept 1845, par. 1.*

163. The Courts of Sudder dewanny adawlut, for the Lower and North-Western Provinces, having had occasion to deliberate as to the force of these expressions, the majority are of opinion that while they are unambiguous in requiring the representative of a deceased plaintiff or appellant, previous to the expiry of the six weeks in which a certain prescribed act is to be performed, to move the court for an extension of that limited period; and while they admit of no interpretation, by which an *intermeddiate* act on the part of the court, notifying to the heirs the fact of the decease of the plaintiff or appellant, can by implication be held to be required, they are not actually *prohibitory* of the court doing of its own mere motion, *previous* to the expiry of the six weeks aforesaid, such act of procedure, as the general powers of the court enable it to do.—*Ibid, par. 2*

164. The majority of the two Courts further observe, that, in so far as "dismissal on default" is enacted as a penalty on the defaulter, it is not just that that penalty should be inflicted in cases where there exists a moral and physical impossibility of avoiding it, viz. when the date of the plaintiff's or appellant's decease is so near the date when default would occur, and the heir or representative at the same time so distant from the place where the decease took place, as to render it an impossibility that he should fulfil the law's requirements. The right of appeal

would thus, in numerous instances be lost altogether, and manifest injustice be done by the law. But it is a maxim that law never enacts an impossibility, and the Court therefore conceive it imperative upon them, in pursuance of their legal privilege to act according to justice, equity and good conscience, to prevent the injustice that would be involved in the infliction of a penalty for failure to perform an impossible act by the institution of a rule of procedure, fitted at least to remove the impossibility of the heir of a deceased party being in court, if he be desirous to prosecute the suit.—*Cir. Ord. 5th Sept. 1845, par. 3.*

165. The Court are pleased, therefore, to prescribe the following rule of practice for the guidance of all the judicial authorities, and to intimate for general information, that it will be followed in the Sudder dewanny adawlut henceforth: 1stly, Whenever it may be certified to a zillah or city Judge, Principal Sudder Ameen, Sudder Ameen, or Moonsiff, that a plaintiff or appellant, in any original suit or appeal, pending in the court of such zillah or city Judge, or Principal Sudder Ameen, Sudder Ameen or Moonsiff, has deceased, the presiding officer of such court shall be at liberty, if he deem it just and proper, to notify the fact in a publication to be affixed in his own cutcherry, and in the cutcherries of all the judicial authorities and the Collector of the district. The publication shall contain a statement of the several depending cases, in which such plaintiff or appellant was a party, and an intimation to his heirs or representatives, that, unless they attend either in person or by vakil for the prosecution of the depending suit or appeal before a certain day, to be fixed and named in the publication, not being more than six weeks from its date, such suit or appeal will be dismissed on default under the provisions of Section 1, Act XXIX. of 1841. 2ndly, The above rule of practice shall be considered equally applicable to appeals, pending in the Court of Sudder dewanny adawlut, with the exception that the publication therein prescribed shall, in such cases, be affixed in the cutcherry of the Sudder court, and in the cutcherries of the several judicial authorities included in the district or districts from which the depending appeals may have been received, and that the zillah and city Judges shall, on receipt of a precept to that effect, cause the said publication to be duly affixed in the places appointed, and certify, with all practicable expedition, the due fulfilment of such order for the satisfaction of the court.—*Ibid, par. 4.*

166. A form of publication is annexed for general use and the civil Judges are informed, that lithographed forms of the same may be indented for on the Government lithographic press.—*Ibid, par. 5.*

The following rules of practice are therefore prescribed for the guidance of the judicial authorities

1 When a plaintiff or appellant dies, the officer presiding in the court may notify the fact in a publication to be affixed in his own and other cutcherries

Contents of the publication.

2 The same rule will apply to appeals pending in the sudder court.

Places in which the notification of the S. D. A. is to be affixed

Form of the publication

نمونہ مہار بعرض علان خبر فوت یعنی از متخاصمین مقدمہ  
حکم استتہار عدالت دیوانی فلان ایسکہ واسطے حاضری قائم مقام شخص  
متوفی کے جسکا نام سمیرت معرہ ذیل میں مندرج ہی خبر فوت نص  
ملور اور ضروری حاضری قائم مقام اسکے ہی تھری دیجاتی ہی جو کوئی کہ  
اوعائے وراثت اور قائم مقامی اور استحقاق پیروی مقدمہ کا بجای متوفی

مذکور کے رکھتا ہوا اسکو چاہئے کہ قبل تاریخ معینہ کے عدالت مذکورہ بالا میں اصلتا یا بذریعہ وکیل یا مختار حسب ضابطہ کے حاضر ہو کے لوازم پیروی مقدمہ عمل میں لاوے در صورتیکہ مابین مبعود مذکورہ حاضر نہ ہوگا یا بحالت حاضری مابین اس محلت کے جو از تاریخ حاضری حسب قانون اسکو حاصل ہو امور واجب التعمیل کو سوانجام نہ کریگا توجو حکم کہ اصدر اسکا بحالت پیروی مقدمہ از جانب متوفی مذکورہ از روی قانون ضابطہ عدالت کے مناسب ہو نا صادر ہوگا اور بعد اس کے کوئی حذر و عویدار قائم مقامے متوفی مذکورہ کا مسوع نہ کیا جائیگا

ممبر مقدمہ نام متخاصمین بیان سے دعویٰ اشیای اشخاص تاریخ معینہ جسکا زید و عمر وغیرہ بابت زر نقد از متوفی بقید ذکر میں اشتہار اپیلانٹان رہا روی مسک بعبط مدعی میں مندرج ہی ندن احمد و یا اپیلانٹ دوسری فیروی نمبر ۳ محمود وغیرہ زاید اپیلانٹ سنہ ۱۸۳۵ ع مطا بنی فلان روز فلان

Cases in which an appeal dismissed under act 29, 1841, may be re-admitted

167. Whereas the provisions of Act XXIX. of 1841, are inconveniently severe as regards appeals, and it is expedient to mitigate the strictness thereof. It is therefore hereby enacted, that whenever an appeal in any of the courts of the East India Company in the Presidencies of Bengal or Madras, shall, after the passing of this Act, have been dismissed under the provisions of the said Act XXIX. of 1841, it shall be competent to the court which shall have dismissed such appeal to re-admit the case if the appellant shall make application for that purpose on the stamp prescribed for miscellaneous petitions, within three months after the appeal shall have been dismissed, if dismissed by the Sudder Court, and within one month after the appeal shall have been dismissed, if dismissed by any other court, and shall satisfy the court that the dismissal was occasioned by the default of his vakeel or by unavoidable accident.—Act XVI. 1845 Sect. 1.

Period for the re-admission of such appeal.

Appeals which may have been thus dismissed before the pass-

168. And it is hereby enacted, that it shall be competent to any of the said courts to re-admit any appeal which may have been dismissed before the passing of this

Act under the provisions of Act XXIX. of 1841, if the appellant shall make application for that purpose on the stamp prescribed for miscellaneous petitions, within three months after the passing of this Act, and shall satisfy the court that the dismissal was occasioned by the default of his vakeel or by unavoidable accident.—*Act XVI. 1845, Sect. 2.*

169. Provided always, and it is hereby enacted, that no appeal which has been re-admitted under this Act, and again dismissed under the provisions of Act XXIX. of 1841, shall be again re-admitted.—*Ibid, Sect. 3.*

170. An appeal lies to the zillah Judge from an order of a Principal Sudder Ameen, refusing to re-admit an appeal under Act XVI. 1845.—*Rep. Sum. Cases, 20th July 1846, p. 81.*

171. The Sudder dewanny adawlut directed a zillah Judge to re-admit, under Act XVI. 1845, an appeal improperly dismissed by his predecessor in office under Act XXIX. 1841.—*Rep. Sum. Cases, 17th Aug. 1846, p. 82.*

## SECTION XI.

### *Decisions of the Appellate Courts.*

172. Held that an appellate court, interfering with a decree of a lower court, cannot pass any decision unfavourable to parties not appealing therefrom, and not otherwise before the appellate court, without allowing them the opportunity of urging any thing in their behalf.—*S. D. A. Sel. Rep. 22d Aug. 1844, vol. 7, p. 180.*

173. An appellate court should not dictate to a lower court what decision it should pass.—*S. D. A. Sel. Rep. 26th April 1845, vol. 7, p. 203.*

174. I beg to be informed whether it is within the competency of a Judge to set aside a decision passed by any of the inferior judicial authorities in a regular suit, when any irregularity or illegality in their proceedings may be brought to his notice by either party, or may transpire incidentally in the course of executing the decree, or in any other miscellaneous proceedings held subsequently thereto.—I am directed to inform you that you are not competent summarily to cancel the decisions of inferior tribunals on the ground of illegality or irregularity, but that you should direct the parties interested to appeal therefrom even although the prescribed period for such appeals should have elapsed.—*Con. 1049, Cal. C. 30th Sept., West. C. 21st Oct. 1836.*

175. I am directed by the Court to request that you will invariably insert, in all decrees passed by you in appeal, the date in which the suit was referred to the subordinate court for investigation and trial. You will further be pleased to require the uncovenanted Judges, to insert the same information in their original decisions in such suits.—*Cir. Ord. 14th Aug. 1840.*

176. Where the judgment of the lower court is expressly affirmed in appeal, any inconsistent words, subjoined to the decretal order of the appellate court, should be treated as surplusage, benefiting or prejudicing neither party.—*S. D. A. Sel. Rep. 30th Aug. 1830, vol. 6, p. 62.*

ing of this act, may be thus re-admitted.

No appeal re-admitted under this act, and again dismissed, shall be re-admitted.

An appeal lies to the S. D. A. from the order of a P. S. A. refusing to re-admit an appeal under act 16, 1845.

The S. D. A. directed a zillah judge to re-admit an appeal under act 16, 1845.

An appellate court, interfering with the decree of a lower court, cannot pass a decision unfavorable to parties not appealing.

An appellate court cannot dictate to a lower court the decision it should pass.

A zillah judge cannot summarily cancel the decisions of the lower tribunals on the ground of illegality and irregularity, but should direct the parties to appeal, though the period of appeal has lapsed.

The zillah judge will insert in all decrees passed in appeal, the date on which the suit was referred to the subordinate court for investigation. The uncovenanted judges will do the same.

Any inconsistent words, subjoined to the decretal order of the appellate court will be treated as surplusage.



The S. D. A., under special circumstances, may overrule a part of the decree of a court of first instance to which no objection had been taken in the appeal stage.

177. Property on which the plaintiff had a mortgage having been sold in execution of a decree obtained by a common bond creditor, the Court held that, notwithstanding the sale, the plaintiff should sue to foreclose the mortgage, instead of for the money lent by him, the sale having made no alteration in his position as mortgagee. Held that it was competent to the Court, under special circumstances, to overrule a part of the decree of the Court of first instance, to which no objection had been taken in the appeal stage.—*S. D. A. Sel. Rep. 21st July 1841, vol. 7, p. 42.*

Appellate courts cannot award less than the legal rate of interest of 12 per cent.

178. Appellate courts are not competent to award less than the legal rate of interest, i. e. twelve per cent. per annum on the sum decreed by the lower court.—*Con. 976, West. C. 7th Aug, Cal. C. 18th Sept. 1835.*

If any irregularity be apparent in the institution of the suit or the proceedings of the lower court an order for re-trial, should issue.

179. In like manner if in hearing appeals, any irregularity in the institution of the suit, or in the proceedings of the Court of first instance, should be observed, an order for re-trial of the case without any regard to the merits thereof, should issue.—*Civ. Ord. 13th Sept. 1843, par. 2.*

A decree of a zillah judge reversing a decree of the P. S. A., without summoning the respondent, deemed illegal.

180. A decree of a zillah Judge, reversing a decree of the Principal Sudder Ameen without summoning the respondent, set aside as illegal. —*S. D. A. Sel. Rep. 23d Sept. 1841, vol. 7, p. 46.*

No final decree can be passed against a respondent, till he has been regularly summoned.

181. No final decision of the court can be passed against a respondent until he has been summoned in the usual course.—*Con. 944, West. C. 10th April, Cal. C. 1st May 1835.*

## SECTION XII.

### *Security for Costs in Cases appealed.*

It is not necessary in any appeal court to take security for costs, but the court may at its own discretion demand them.

182. Whereas, it is not now by law necessary within the territories subject to the Presidency of Fort William in Bengal, to take any security for costs in appeals before the sudder courts; and, whereas, no security for costs in appeals before the sudder courts; and, whereas, no security for costs is now required by law in appeals from the decisions of Moonsiffs; and, whereas, it is expedient that appeals from all courts should be put in this respect upon a uniform footing. It is therefore hereby enacted, that within the said territories it shall not be necessary in any Court of appeal of the East India Company to take any security for costs, but it shall be in the discretion of every such Court of appeal to demand security for costs from the appellant or not, as it shall see fit, before the respondent is called upon to answer.—any Law or Regulation to the contrary notwithstanding.—*Act III. 1845.*

Form of bond to be executed when security for costs in cases of appeal is demanded.

The appellants' surety binds himself to make good the whole costs incurred in the appeal.

183. I am directed by the Court to transmit to you for your information and guidance, the accompanying copy of a resolution this day passed by the Court on the subject of the security for costs required to be furnished by appellants, together with a copy of the form of bond, to be executed in future by all sureties in cases of appeal. The Court are of opinion, that in appeals the appellant's surety for costs binds himself to make good the whole costs which shall be incurred by the appeal, who-soever shall stand in the place of appellant when it shall be decided. consequently that it is unnecessary, when the death of an appellant, respondent, or surety happens pending an appeal, to incur the delay and inconvenience which would be occasioned by calling for fresh securities.—*Civ. Ord. Cal. and West. C. 13th July 1832.*

184. If security for costs be demanded from an appellant by a Court of appeal, in its discretion under Act III. 1845, the reasons for the same should be recorded.—*Rep. Sum. Cases*, 17th Nov. 1845, p. 72.

If security for costs be demanded, the reasons must be recorded.

## SECTION XIII.

*Regular Appeals to the Sudder Court from Zillah Courts and of Principal Sudder Ameen in cases above 5000 Rupees.*

185. I am directed to request that the Judges will abstain from recording, on petitions presented to them or in their proceedings, any remarks calculated to hold out encouragement to parties to apply to the Sudder dewanny adawlut in cases in which its interference is barred by the Regulations; the practice alluded to being manifestly improper, as having a tendency needlessly to occupy the time of the court, and to put the applicants to much unnecessary trouble and expence.—*Cir. Ord.* 1st April 1842.

The judges will not record on petitions presented to them any remarks which might encourage parties to apply to the S D A, in cases in which then interference is barred.

186. In all suits originally decided by the zillah or city Judge, an appeal shall lie to the Sudder dewanny adawlut.—*Reg. 5, 1831, Sect. 28, Cl. 3.*

In all suits originally decided by the judge, an appeal to lie to the S D A.

187. Into whatever zillah or city the Governor General in Council, under the powers vested in him by Section 2, Regulation 5, 1831, has extended or shall see fit to extend the provisions of that Regulation, the period for preferring a regular or special appeal from the decision of the Judge of the zillah or city to the Sudder dewanny adawlut shall be the same as that prescribed by Section 10, Regulation 6, 1793, for appeals from the decisions of the Provincial courts, namely three calendar months.—*Reg. 7, 1832, Sect. 2, Cl. 1.*

Appeals from zillah courts under reg. 5, 1831, must be preferred to the S D A within 3 months.

188. You will be pleased to observe that under the Construction alluded to, petitions of appeal in cases of the description in question must be presented to you, (or to the Principal Sudder Ameen, as the case may require) within three months from the date of the decision, without any deduction whatever; otherwise it will not be competent to you (or to the Principal Sudder Ameen,) to certify that they have been duly preferred.—*Cir. Ord. Cal. and West C. 24th Aug. 1838, par. 2.*

Appeals to the S D A must be presented to the judge or P S A within 3 months from the date of decision.

189. And it is hereby enacted, that in all suits exceeding the amount or value specified in clause first, Section 18, Regulation 5, 1831, which shall, under the authority of Section 1 of this Act, be referred to a Principal Sudder Ameen the appeal from the decision of such Principal Sudder Ameen shall be directed to the Court of Sudder dewanny adawlut, and shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a zillah Judge to the said Court of Sudder dewanny adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder dewanny adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a zillah Judge.—*Act XXV. 1837, Sect. 4.*

In all suits exceeding the value specified in cl. 1, sec. 18, reg. 5, 1831, which shall, under section 1 of this Act be referred to a P S A, the appeal shall be direct to the court of S D A, and shall be conducted as if it were an appeal from a zillah judge, and any application for a review of the decision upon such judgment shall be made by the P S A, to the court of S D A.

190. The Court observe that in forwarding their certificates of appeal, and in making their returns to the precepts of the Court under Act XXV. 1837, the Principal Sudder Ameen are not guided by any prescribed forms, and that much want of uniformity consequently prevails.

Form in which the P S A will forward the certificate of appeal and make his returns to the precepts of the S. D. A.

This diversity of practice being found inconvenient, the Court are pleased to direct that those of officers shall be required to conform to the practice of the Zillah courts in this matter, substituting the Oordoo for the English language.—*Cir. Ord. Cal. and West. C. 10th Sept. 1839, par. 1.*

In a suit laid at a sum above 5,000 rs. in which the P. S. A. decrees less than that sum, the appeal will lie to the S. D. A.

191. Held on a reference from the Judge of Mymensingh, that in a suit laid at a sum exceeding 5000 rupees, but in which the Principal Sudder Ameen gives a decree for a sum less than that amount, the appeal from the Principal Sudder Ameen's decree lies to the Sudder dewanny adawlut.—*Con. 1282, Cal. C. 7th, West. C. 26th Aug. 1840.*

Extends sec. 4 of act 25, 1837, to all interlocutory orders passed by P. S. A.

192. And it is hereby enacted, that the provisions of Section 4, Act XXV. of 1837, in respect to appeals from decisions passed by Principal Sudder Ameens, in suits of the nature specified therein, be extended to all interlocutory orders passed by those officers in such suits.—*Act VI. 1843, Sect. 2.*

Mode in which the petition of appeal is to be transmitted to the S. D. A. the certificate contents of the roobukaree, which accompanies it

193. On the receipt of a petition of appeal to the Sudder dewanny adawlut from a decision passed in an original suit, you will proceed as directed in Section 10, Regulation 6, 1793, and transmit it as soon as practicable, with any documents that may be filed with it, to this court, under cover of a certificate, and accompanied by a roobukaree, stating the names of the parties, with an abstract of the decree, the date of the decision, and the date on which the petition of appeal was presented, and the grounds for considering it to have been filed within the prescribed period.—*Cir. Ord. Cal. and West. C. 28th June 1833, par. 2.*

Notice to be at the same time served on the appellant

194. You will at the same time cause a written notice to be served upon the appellant, informing him that you have forwarded the petition to the Sudder dewanny adawlut, and that if he do not proceed in the appeal within six weeks after it may be filed in that court, the appeal will be dismissed, unless he should shew reasonable cause to the satisfaction of the court for not having proceeded in it. This notice, with a certificate that it has been duly served, is also to be forwarded to the court.—*Ibid, par. 3.*

Each petition of appeal must be forwarded with a separate certificate and roobukaree.

195. Each petition of appeal should be forwarded with a separate proceeding and certificate.—*Ibid, par. 4.*

Printed forms of the two certificates to be submitted with petitions of appeal presented to the lower court

196. I am directed by the Court to forward the accompanying printed forms of two certificates, to be submitted under the Circular order of the 28th June, 1833, with petitions of appeal presented to your court, and to request that you will be particularly careful that the roobukaree accompanying the first certificate contains all the information called for by the second paragraph of the abovementioned circular.—*Cir. Ord. Cal. C. 24th Oct., West. C. 4th Nov. 1834, par. 1.*

Mode in which the endorsements on the certificates are to be filled up.

197. I am further directed to request, that you will with a view to prevent any mistakes or irregularities in the transmission of these papers, indent on this office for blank forms, and that you will fill up the endorsements of the certificates, when requisite, in the manner indicated on those which accompany this letter. In entering the number of enclosures, you will number each petition, roobukaree, notice, &c. separately, although it may be written on more than one sheet. Some of the zillah Judges are in the habit of forwarding roobukarees drawn out on separate sheets of paper and written on both sides: as this practice, however, renders the filing of these documents extremely inconvenient, I am directed to request, that if it obtains in your court, you will discontinue it, and in future submit in all practicable cases copies of proceedings or roobukarees on sheets of paper joined together with paste or gum, and written on one side only, attesting the junction of the sheets with your official signature.—*Ibid, par. 2.*

Each petition, roobukaree, notice, &c. to be separately numbered

Roobukarees to be written on one side only, and the sheets to be joined together with paste or gum.

198. If any person shall deem himself aggrieved by the decree of a Provincial court of appeal that may be passed subsequent to the 1st May, 1793, for land or other real property being lakhiraj (exempted from the payment of revenue to Government) the annual produce of which shall exceed one hundred sicca rupees; or for any zemindary, independant talook, or other landed estate, being malgoozaree (paying revenue to Government) where the produce shall exceed one thousand sicca rupees per annum, or for any dependant talook, the annual produce of which shall be more than one thousand sicca rupees; and in all other cases where the decree shall be for a sum of money, or personal property, or real property not of the descriptions before mentioned, the amount or value of which shall exceed one thousand sicca rupees, such persons shall be at liberty to appeal from the decision to the Dewanny adawlut, by petition of appeal. The petition is to state (respect being had to the matter decreed) the annual produce of the land whether lakhiraj or malgoozaree, the sum of money, or the value of the property which may be decreed, the name of the person in whose favor the decree may be given, the court in which it may have been passed, when it was made, what was decreed by it, and whether the decree has been executed; and is to assign some cause, special or general, for appealing from the decision. The petition is to be accompanied with an attested copy of the decree of the Provincial court of appeal, or by a written declaration signed by the party desirous to appeal, or his vakeel, that ten days after the decision was passed, he applied to the court for a copy of the decree, and was denied it. The petition is to be presented to the court in which the decree appealed against may have been passed, or to the Sudder dewanny adawlut, within three calendar months after the day on which the decree may be given. But it shall nevertheless be permitted to such person, to prefer his petition of appeal to the Sudder dewanny adawlut, after the expiration of the three months, and the court are authorized to admit the appeal, provided the petitioner can show just and reasonable cause to their satisfaction for not having preferred it within the limited period. But whenever the Sudder dewanny adawlut may admit or reject an appeal, which may be preferred to them after the limited time, they are to enter upon their proceedings their reasons at large for so doing, and in admitting such appeals, they are to observe the caution prescribed in clause second, Section 9, with regard to the trial or admission of the appeals therein alluded to, after the limited period.—*Reg. 6, 1793, Sect. 10.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 5, 1803, Sect. 10, Cl. 8.*

From what decrees of the provincial courts of appeal, an appeal is to lie to the S. D. A.

Petition of appeal to be accompanied with a copy of the decree, or a written declaration from the party or his vakeel, that he applied for a copy of the decree within ten days, and was denied it.  
Period limited for preferring appeals.

Cases in which the S. D. A. may admit appeals after the limited time.

199. When the securities hereby required shall have been entered into, the senior Judge of the court is immediately to endorse on the petition in his own handwriting, the day of the month and the year in which it may be presented, and sign it with his name, and cause to be written in the margin of the record immediately opposite to the decree of the court, the word "appealed," and the court are to transmit the petition to the Sudder dewanny adawlut. The court is at the same time to direct notice to be given to the appellant in writing, that within fifteen days the proceedings held in the cause appealed will be certified to the Sudder dewanny adawlut, and that if he shall not proceed in the appeal within six weeks after it may be filed in

When the appellant has entered into the securities required, the senior judge of the court is to make the endorsement herein directed on the petition, and the court is to transmit it to the S. D. A.

Notification to be made to the appellant upon the receipt of the petition of appeal.

that court, the appeal will be dismissed, unless he shall shew reasonable cause to the satisfaction of the court for not having proceeded in it.—*Reg. 6, 1793, Sect. 10.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 5, 1803, Sect. 10, Cl. 8.*

The vakeel who presents an appeal to the lower court is bound to receive the notice prescribed by sec. 10, reg. 6, 1793, and to give a receipt for it.

200. I am directed to communicate to you, for general information, that it has been held by the Courts of Sudder dewanny adawlut for the Lower and Western Provinces, that the vakeel who presents to a lower court an appeal from its decision to the sudder court, is bound, as the authorized and accredited agent of the appellant, to receive the notice prescribed by Section 10, Regulation 6, 1793, and Section 3, Regulation 12, 1797, and that his receipt is a sufficient service upon the appellant.—*Cir. Ord. 17th Dec. 1841, par. 1.*

Every vakeel will provide the insertion of a clause in his vakalatnamah empowering him to receive the notice

201. To obviate any doubt or misconception on the point, the Court are pleased to direct that every vakeel presenting a petition of appeal of the nature contemplated, to the lower court, be required to procure the insertion, in his vakalatnamah of a clause specially empowering him to receive the prescribed notice. It is to be observed, however, that the omission of such a clause in the vakalatnamah will not absolve the vakeel from the necessity of receiving the notice for service upon his client —*Ibid, par. 2.*

[*The orders of the Sudder Court respecting the insertion of the names of all the respondents in the petition of appeal will be found at pages 678—679, Nos. 53 to 58.*]

Rules relating to the transmission of appeal, modified

202. The rules contained in Section 13, Regulation 5, and in Section 11, Regulation 6, 1793, are hereby modified. In transmitting the record in cases of appeal as therein provided, it shall be sufficient for the Zillah or City, or Provincial courts, as the case may be, to transmit the original pleadings, depositions, and exhibits filed in the case with a list of them, and it shall not be necessary, in the first instance, to transmit the applications and processes for the attendance of witnesses, the returns of the nazir and other miscellaneous papers and proceedings not material to the trial of the appeal. Provided however, that it shall at all times be competent to the court to which the appeal shall have been made, to call for such miscellaneous papers, or to direct the parties to produce copies of the same, should the court think it necessary to refer to them —*Reg. 9, 1831, Sect. 8.*

Proviso.

With the petition of appeal and the prescribed certificate, the lower court will submit tabular statements according to the following form.

203. I am directed to request that in forwarding petitions of appeal to the Sudder dewanny adawlut from the judgment of the Zillah court under the provisions of Section 10, Regulation 6, 1793, modified by Section 8, Regulation 9, 1831, you will together with the petition of appeal and the prescribed certificate in every case, submit tabular statements according to the accompanying forms containing clearly and fully the several particulars therein indicated —*Cir. Ord. 26th Dec. 1846, par. 1.*

Particulars which the petition of appeal should contain.

204. The petition of appeal should state the court in which the decree appealed against was passed, the date on which it was made, the proportion of the claim in regard to which the appeal may be instituted, the names of all the respondents as required by Circular order No. 21, dated 14th July, 1843, the sum of money, or the value of the property which may have been decreed, and also whether the decrees have been executed or not. These particulars must be inserted in form No. 1. The information required by form No. 2 should be furnished by your office.—*Ibid, par. 2.*

205. Should any petition of appeal be deficient in the specification of the several points which it ought to contain, notice of the same should be given either to the petitioner or his vakeel, an acknowledgment of the service of notice be forwarded with the papers, and a note to that effect, specifying the excepted particulars be inserted in the column of "Remarks" of form No. 1. It is not of course intended that the column of remarks should be limited to this kind of information, as various circumstances which cannot be foreseen, may arise calling for remarks, the proper place for the insertion of which would be the last heading of statement No. 1—*Cir. Ord. 26th Dec. 1846, par. 3.*

If a petition of appeal be deficient in the specification of these points, notice must be given to the appellant or his vakeel, and an acknowledgment of the notice forwarded

206. You are requested to communicate the foregoing instructions to the Principal Sudder Ameen of your district—*Ibid, par. 4.*

These instructions to be communicated to the P. S. A

207. Printed forms for the use of your own office and that of the Principal Sudder Ameen in English and Urdu are herewith forwarded. Statements in both languages should be submitted with each case.

Forms.

#### FORM NO. 1.

Names of all the appellants	Resignation of mag officer	Names of all the respondents (Circular orders No 211, July 21st, 1842, and No. 21, July 14th, 1843,) with their plea
Date of the decision	The property in dispute with its local valuation, or the amount of cash claimed	What property was decreed or what sum, and the proportion of the claim whether decreed or dismissed in regard to which the appeal may be instituted
		Executed or not.
		Remarks

#### FORM NO. 2

Abstract of decree	Date of presentation of appeal	Within the prescribed period otherwise	Certify notice to appellant or his vakeel (Circular order No 176, December 17th, 1841,) with date of the same.	Renewal
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—*Ibid, par. 5.*

208. All petitions for regular appeals from decisions of Principal Sudder Ameens, in suits above the value of 5,000 rupees, shall be made direct to this court, or to the Principal Sudder Ameens. In the latter case the Principal Sudder Ameen, in the event of the appeal having been preferred within the prescribed period,\* shall transmit as soon as practicable, to the address of the Register of the Sudder court, the petition of appeal with any documents filed therewith, under cover of a certificate bearing his official seal and signature, and accompanied by a roobukaree stating the names of the parties, with an abstract of the decree, the date of decision, and the date on which the petition of appeal was presented. The Principal Sudder Ameen will abstain from causing copies of the original papers to be made as well as from transmitting the originals, until so directed by a precept from the Sudder court, when he will forward them with the precautions against injury from wet enjoined by the Court's orders noted in the margin, depositing the copy of the record required to be made, for safe custody, in the Record Office of the Judge.—*Cir. Ord. 6th Jan. 1840.*

Transmission of the petition of appeal by the P. S. A. to the registrar of the S. D. A., together with a certificate and roobukaree.

Neither original documents nor copies to be sent, until ordered by the sudder court

Nos. 67 and 70, dated 19th Sept. 1823 and 21st May, 1824.

\* Vide Circular, No. 16, dated 21th August, 1838.

In what cases it shall be necessary to file an authenticated copy of the decree with the petition of appeal.

209. Under the preceding rules, parties in suits decided in the first instance in a Zillah or City court, a Provincial court, or the Sudder dewanny adawlut, will be enabled to prefer an appeal from such decision without the necessity of filing an authenticated copy of the decree; but if any party in a suit which may be regularly appealable to a Provincial court, or to the Sudder dewanny adawlut, may be desirous, under the option allowed by the Regulations of presenting his petition of appeal in the court by which the appeal is to be tried, rather than in the court by which the decision may have been passed in the first instance, it shall be requisite for such party to file with his petition of appeal an authenticated copy of the decree — *Reg. 26, 1814, Sect. 8, Cl. 7.*

Modification of certificate No 1

210. The Court of Sudder dewanny adawlut having ruled that petitions of appeal from decisions passed by you on original suits, (or by the Principal Sudder Ameen under Act XXV of 1837,) need not be accompanied, when presented to you, by a copy of the decree appealed against, it is necessary to modify the certificate No 1, prescribed by the Circular order of the 24th October, 1834. I am accordingly directed to request that in using that form on such

"Copy of it applied for on the \_\_\_\_\_, stamped paper furnished on the \_\_\_\_\_, copy of the decree delivered or tendered on the \_\_\_\_\_"

occasions, you will in future strike out the three heads noted in the margin of the first paragraph of the certificate — *Cur. Ord. Cal. and West. C. 24th Aug. 1838, par 1.*

The officers of the court are directed to make no unnecessary delay in preparing the copies of decrees. The srishtadar will endorse on the back of the copy, the information required by cl 9, sec 8, reg 26, 1814

211. The Court having observed, that the amils of the lower courts sometimes keep the stamped paper, supplied by the parties for copies of decrees, for months, without preparing the copies required, thereby unnecessarily prolonging the period allowed for appealing, direct me to request that you will take care that the officers of your court make no unnecessary delay in the execution of this part of their duty, and that you will cause the srishtadar of your court to state, by an endorsement on the back of the copy furnished, the information required by Clause 9, Section 8, Regulation 26 of 1814, with an explanation of the cause of delay, whenever the copy cannot be furnished within one month from the date of the stamped paper being supplied. — *Cur. Ord. Cal. and West. C. 18th May 1832*

Papers which are to be sent to the sudder court with the petition of appeal

212. In cases appealed to the Sudder dewanny adawlut, copies must be kept of all papers sent down, but only material papers must be submitted such as the original pleadings, depositions and exhibits, with a list of them. *Ismaniceses, nazir's returns*, and other miscellaneous papers and proceedings need not be sent until specially called for. The proceedings are not to be copied and sent down till called for by a precept — *Con. 712, 14th Dec 1832.*

Subordinate courts strictly enjoined to record the point or points at issue between the parties, and the ground of their judgment

213. To enable the Court of Sudder dewanny adawlut duly to exercise the powers hereby vested in them, the several courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force which require them to record the point or points at issue between the parties and the grounds on which their judgment or orders may be issued. — *Reg. 6, 1831, Sect. 2, Cl. 7.*

The judges and the P S A are particularly desired to submit with appealed cases, the proceeding he is required to draw up by sec 10, reg 26, 1814

214. Several instances having lately been brought to the notice of the Court of the record of appealed cases, submitted agreeably to the rule contained in Section 8, Regulation 9, 1831, being sent up without the proceeding which the Judge is required to draw up by Section 10, Regulation 26, 1814, and the omission being extremely inconvenient, particularly where the appellant pleads that the Judge has omitted to receive documents tendered, or to summon

witnesses named by the party ; I am directed to request that you will invariably submit that proceeding in all appealed cases that you may forward to the Court.—*Cir. Ord. Cal. and West. C. 5th Aug. 1836*

215. It shall further be competent to a single Judge to direct that the execution of any judgment or order passed by an inferior court, in all cases in which that measure may appear to him expedient, may be stayed until a final decision has been passed thereon.—*Reg. 9, 1831, Sect. 2, Cl. 5.*

A single judge of the S D A may stay execution of judgment or order until final decision

216. You are desired, in all cases of your transmitting petitions of appeal to the Sudder dewanny adawlut, to report at the same time, whether the decree appealed from has been carried into execution, or otherwise.—*Cir. Ord. 27th April 1796.*

The J and P S A. will also report whether the decree appealed from has been executed, or not

217. The Sudder dewanny having on special appeal set aside as incomplete the decisions of the Principal Sudder Ameen and zillah Judge (the Courts of first instance and first appeal,) and the Judge having then decided the case himself without further reference to the Principal Sudder Ameen, held that the appeal to the Sudder dewanny adawlut from his decision must be considered as an appeal from a judgment in an original suit, and admissible as a matter of course.—*Rep. Sum. Cases, 6th July 1812, p. 31*

Particular case in which an appeal to the S D A, from the Judge in appeal, was considered an appeal from a judgment in an original suit

218. When there are several defendants, and the decree is given against all, without any specification what is due from each, the person who first appeals must file his petition on the full amount of the decree, the appeal would not be admissible were he to write on it the amount of his alleged share. If it be stated in the decree, or can be gathered from the proceedings, what is the share of each defendant, each may appeal separately on his own share only. In a case where the separate habilitus of several defendants holding under distinct titles were not mentioned in the decree, the zillah Judge was directed to amend the decree by inserting the amount due by each defendant, in order that they might not be barred their individual right of appeal.—*Con. 849, 20th Dec. 1833*

Case in which one of several defendants may appeal on the full amount of the decree, or, separately, on his own share only.

## SECTION XIV

### *Execution or Suspension of the Decrees of the Uncovenanted Judges during Appeal*

219. When an appeal may be received from the decision of a Moonsiff, the Judge is empowered to suspend the execution of the decree, provided the party appealing against it shall give good and sufficient security within a reasonable period to be fixed by the Judge to perform the decree of the court.—*Reg. 23, 1814, Sect. 46, Cl. 5*

In what cases the judge may suspend the execution of decrees passed by moonsiffs, from which an appeal may be admitted.

220. I am now directed to transmit for your information, and for the information of the city Judge, the enclosed copy of a letter from the late Judge of Allahabad, under date the 26th June, 1812, and copy of the letter written in reply on the 10th July following, containing the determination of the Sudder dewanny adawlut, that execution of judgment for money or other moveable property must be stayed, if good and sufficient security be given by the appellant for performing the decision which may be passed upon the appeal.—*Con. 284, 29th Dec. 1817, par. 3.*

Execution of judgment for money or other moveable property to be stayed if good security be given for performing the decision passed in appeal



The enforcement of the moonsiff's decrees may be stayed during appeal on good security being given.

221. The Court further direct me to observe, that the terms of the 4th and 6th clauses of Section 45, Regulation 23, 1814, appear to imply, that if an appeal from a Moonsiff's decree be admitted, and the prescribed security for staying execution in cases of appeal be given, the enforcement of the decree should be suspended during the trial of the appeal.—*Con.* 281. 29th Dec. 1817, par 5

[*The above rule (219) is extended to suits decided by Sudder Ameens, by Section 73 of the same Regulation*]

It rests with the judge to whom the appeal from the decision of the S A is presented to order or stay its execution

222. I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of your letter of the 2d instant and its enclosures ; and in reply to inform you, that the Court are of opinion that the construction of Clause 3, Section 11 of Regulation 13, 1808, suggested by the Judge of Burdwan, is correct, and that it rests with the zillah Judge, to whom the appeal from a Sudder Ameen's decision is preferred, to order or stay the execution of the decision appealed from ; and not with the Register,\* to whom the appeal is referred by the Judge for trial.—*Con.* 646, 8th July, 1831.

[*These rules regarding appeal, are also extended to suits under 5000 rupees decided originally by Principal Sudder Ameens, and from which a regular appeal lies to the Zillah courts.*]

## SECTION XV.

### *Execution or Suspension of Decrees of the Zillah Courts, when appealed to the Sudder Court, in cases of Landed Property*

one suing for such property & obtaining a decree for it to have possession notwithstanding an appeal, on giving prescribed security

223. Whenever a person claiming the proprietary right in land, houses, or other immoveable property, not in his possession, shall obtain a decree, upon investigation of the merits of the case (whether in a Zillah or City court, or in a Provincial court of appeal, before which the suit may be tried in the first instance) adjudging him to be the proprietor of such land, houses, or other immoveable property ; he shall obtain possession thereof in execution of such decree, notwithstanding an appeal therefrom, provided he shall give good and sufficient security, for performing the decree which may be passed upon the appeal, in a sum equal to one year's produce of the property adjudged, if malgoozary land ; or ten years' produce, if the land be lakhiraj ; or the computed value, if it be a house, or immoveable property of any other description.—*Reg.* 13, 1808, *Sect.* 11, *Cl.* 2.

Unless the court to which the appeal is preferred, see cause for allowing the appellant to retain pos-

224. Provided however, that if the court, to which the appeal may be preferred in such cases, shall, in any instance, see special cause for leaving the appellant in possession during the appeal, it shall be competent to that court to order the same ; requiring, in such case, from the appellant, the same security as is above required to be given by the respondent.—*Ibid*, *Cl.* 3.

Cases in which the court would be justified in restoring the

225. On the first point, the Court are of opinion, that cases may arise, in which the Provincial court of appeal [now the Sudder court] would be warranted in restoring the appellant

\* Though the office of Register has been abolished, this rule is still applicable to the Principal Sudder Ameens

to possession, after the respondent had been put in possession by the Zillah or City court, in execution of its decree : as for instance, where an appellant had regularly preferred his appeal and tendered proper security to the Zillah or City court, and moved it to suspend execution of its decree until the orders of the Provincial court could be received. Should the Zillah or City court in such circumstances, proceed to execute its decree, and it should appear to the Provincial court, that special ground existed for staying execution : and that court should further judge, that no serious inconvenience would be likely to result from again changing the possession, the Court of Sudder dewanny adawlut are of opinion, that the Provincial court would be warranted, under such circumstances, in restoring the appellant to possession. The Court likewise observe, that other cases might occur, in which the Provincial court would be competent to exercise the power in question ; but all of which cannot of course be foreseen and defined.—*Con. 90, 12th Sept. 1811.*

appellant to possession after it has been given to the respondent; it is competent for them to act thus

226. Construction 90 is not considered as precluding the lower courts from exercising a discretion to delay, for a reasonable time the execution of their own orders for giving possession to a respondent, until the receipt of instructions from the appellate court.—*Con. 1077, West. C. 10th, Cal. C. 15th March 1837.*

The lower court may exercise the discretion in postponing delivery of possession to the respondent pending the decision of the appellate court.

227. With regard to the first point noticed by Mr. Smith, the Court observe, that the Construction adverted to in his letter, (No. 90, of the Construction Book) had reference merely to the power vested in the appellate tribunals of restoring an appellant to possession after it had been given to a respondent by the lower court ; though as noticed by Mr. Smith, it incidentally implies a discretion on the part of the lower court to delay for a reasonable period the execution of its own order for giving possession to the respondent in case of an appeal, until the receipt of instructions from the appellate court ; and the Court do not see any thing in the clause under consideration which would preclude the exercise of a sound discretion in particular cases, which may appear to require it.—*Con. 1077, West. C. 10th, Cal. C. 25th March 1837, par. 2.*

Idem.

228. The execution of a decree of a zillah Judge for the forfeiture of an estate to Government for the offence specified in Section 22, Regulation 6, 1795, and Section 22, Regulation 28, 1803, may be stayed during an appeal to the Provincial court on security under Section 11, Regulation 13, 1808.—*Con. 198, 8th March 1815.*

The execution of a decree under sec 22, reg 6, 1795, may be stayed, pending an appeal, on security

229. In all cases, in which an appeal is allowed by the Regulations, the decree-holder should not be put in possession without furnishing security to abide by the ultimate award, until after the period allowed for the appeal shall have elapsed, but that possession may, of course, be awarded on the tender of such security, under Clause 2, Section 11, Regulation 13, 1808.—*Con. 536, 1st Jan. 1830, par. 2.*

The decree holder will not, without security, obtain possession till the period for appeal has elapsed

230. With reference to the Court's further construction of the same clause under date the 1st January, 1830, paragraph 2, No. 536 of the printed Construction Book, taken in connection with the rule passed in the latter part of Clause 3, Section 16, Regulation 5, 1831, for enabling the respondent to take immediate measures for the execution of the decree confirmed in appeal, I wish to be informed, whether it is imperative on the court, in all cases where the Regulations allow a second or special appeal, to demand from the decree-holder security to abide the ultimate award, in the event of his wishing to obtain pos-

Idem.

session under the decree within the period allowed for the appeal. A practice the reverse of this has hitherto prevailed in this district.—The Court remark that the second point referred by Mr. Smith, had already been provided for in the letter to the address of the Judge of Cawnpore, dated 1st January, 1830, No. 536 of the Construction Book, and they are of opinion that the rule therein laid down, which they do not consider to have been superseded by Clause 3, Section 16, Regulation 5 of 1831, or any subsequent enactment, should continue to be observed.—*Con. 1077, West. C. 10th, Cal. C. 25th March 1837.*

Forms of security  
for staying the exe-  
cution of decrees

231. The forms of security for staying the execution of decrees of this court shall be invariably drawn up in future agreeably to the annexed forms, marked A. and B.—*Cir. Ord. Cal. and West. C. 17th Feb. 1837, par. 4.*

What the surety  
in cases of execution  
of decrees, binds him-  
self to—on the death  
of appellant, respon-  
dent, or surety dur-  
ing appeal, fresh se-  
curities not necessa-  
ry

232. The surety for staying, or for obtaining execution of the decree appealed against, binds him self and the property pledged by his bond to satisfy the decree which shall be passed on the appeal, whosoever, at the time of its being passed, shall stand in the place of appellant or respondent, and consequently it is unnecessary, when the death of an appellant, respondent or surety happens pending an appeal, to mean the delay and inconvenience which would be occasioned by calling for fresh securities.—*Cir. Ord. Cal. and West. C. 13th July 1832.*

Provision for cases  
of non-payment of  
revenue of disputed  
lands during an ap-  
peal

233. Provided further, that whether the appellant or respondent be left in possession of lands paying revenue to Government, during an appeal, if the party in possession of such land shall neglect to pay the revenue due upon the assessment; and a public sale shall in consequence be ordered to take place: the party not in possession, by payment of the revenue due, and giving the prescribed security, previously to the sale, shall be put in immediate possession; and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of one per cent per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause.—*Reg. 13, 1808, Sect. 11, Cl. 4.*

Courts of appeal  
in particular  
require further  
security during ap-  
peals, if on applica-  
tion of the parties  
the security taken ap-  
pear insufficient

234. Notwithstanding the appellants in causes depending before the Sudder dewanny adawlut, and the Provincial courts of appeal, may have entered into the security required of them by Section 2 of Regulation 13, 1796, those courts are authorized, in cases, wherein from delay in the decision, the security so given may appear insufficient, on the application of the respondent or respondents in all such cases, to require any additional security which they may deem necessary to secure the party who may have obtained a judgment in his favor, from any loss by the non-execution of such judgment during the appeal: and in default of such further security being given within a reasonable period, to be fixed for that purpose, the courts are empowered to direct the judgment in question to be carried into execution, in like manner as if no security had been given by the appellant, provided that in such cases good and sufficient security, as prescribed by the Regulations, be given by the respondent, previous to his being put in possession of the property in litigation.—*Reg. 5, 1798, Sect. 3.*

In default of such  
further security be-  
ing given by appel-  
lants, the judgment  
to be executed.

Provided the pre-  
scribed security be  
given by the respon-  
dent

## SECTION XVI.

*Rules regarding the Land which is the subject of Litigation during the Appeal.*

235. In all instances wherein the plaintiff in a Zillah or City court may obtain a judgment in his favor for land or other real property, and the defendant appealing therefrom to a Provincial court may be left in possession of the property, under the security proscribed by the Regulations, any private transfer of such property by sale, gift, or otherwise, or any mortgage thereof which might be made by such appellant during the appeal to the Provincial court, or during a further appeal to the Court of Sudder dewan-ny adawlut, would, in the event of the judgment against him being confirmed on the appeal, be of course, and is hereby declared to be, null and void.—*Reg. 5, 1798, Sect. 4.—Ced. and Cong. Prov. Reg. 4, 1803, Sect. 14, Cl. 1.*

Any private transfer or mortgage of land, or other real property, during appeals, declared null and void, in the event of the judgment against such property being confirmed on the appeal

236. But as malgoozary lands (lands assessed with the public revenue) are in all cases, by whomsoever possessed, held answerable for the public revenue assessed thereon, and as according to the general rules established for the collection of the public revenue, such lands, and also lakhuraj lands and other property appertaining to the same estate, may become liable to sale by Government, from the neglect of the party in possession to discharge the revenue due therefrom, by which sale, in cases of appeal, the party to whom the property of the lands is ultimately adjudged, might, notwithstanding be deprived of it, unless he purchased the same at the public sale; to obviate all doubt respecting the right of the party making the purchase in such cases, it is hereby declared, that whenever any land or other property, for which a judgment may have been obtained in any of the established Courts of justice, but which, during an appeal from such judgment by the party cast, may be left in the possession of the appellant, shall, while such appeal is pending, or before the ultimate judgment thereon be put in execution, be sold by Government to make good an arrear of the public revenue due from the appellant; and shall be purchased by the respondent; the party so purchasing, in the event of such property being finally adjudged to him on the appeal, shall be entitled to recover from the appellant, so left in possession, the full amount of his purchase money and of all expenses attending the purchase so made by him, with interest thereon at the rate of twelve per cent. per annum, in addition to any other sum which may be adjudged due to him on account of the profits arising from the land, or other property in question, anterior to the sale.—*Ibid.*

Provision for the public sale of the property adjudged, in such cases, on account of the public assessment.

Rights of respondent in such cases, who may purchase the property sold by govt, and ultimately adjudged to him on the appeal

237. It is further declared, that in the case above supposed, if the respondent shall not have purchased the land, or other property, sold by Government to make good an arrear of public revenue due from the appellant left in possession thereof, and if the ultimate judgment on the appeal be in favor of such respondent, he shall be entitled to recover from the appellant left in possession the amount of the purchase money paid for the property so sold, and adjudged to the respondent; with interest thereon at the rate of twelve per cent. per annum, in addition to any other sum which may be adjudged to him on account of the profits, arising from the property so sold anterior to the sale of it :

Rights of respondent in such cases, who may not purchase the property sold by govt, and ultimately adjudged to him on the appeal

unless the property in question shall have been, directly or indirectly, purchased by the appellant himself, or in his behalf, at the public sale ; in which case, on clear proof thereof being made by the respondent to whom such property may be ultimately adjudged, he shall be entitled to the possession thereof, and to all profits arising therefrom, as may be directed by the decree in the case, notwithstanding the fictitious sale supposed.—*Reg. 5, 1798, Sect. 4.—Ced. and Conq. Prov. Reg. 4, 1803, Sect. 14, Cl. 1.*

Enquiry into a fictitious purchase after judgment is a new cause of action.

238. The institution of an enquiry into a plea of fictitious purchase made after judgment passed, by a party to the suit, constitutes a new cause of action under Section 4, Regulation 5 of 1798, and cannot be looked upon as carrying out the original intentions of the court passing the decree.—*Rep. Sum. Cases, 13th June 1840, p. 32.*

Principles of the preceding section declared to extend to all familiar cases whether the original plaintiff or defendant or the appellant or respondent, be left in possession of the property during an appeal to the provincial courts, or to the S. D. A., or to the king in council.

239. The principles of the rules contained in the two preceding sections, are to be considered equally applicable to cases in which the plaintiff in a Zillah or City court may be put in possession of land, or other property adjudged to him, during an appeal, in consequence of the defendant's failing to give security for staying the execution of the decree as required by the Regulations ; and generally to all cases in which the possession of property may be transferred by the decree of any Court of justice ; from which decree an appeal may be depending in a superior court ; whether a Provincial court of appeal ; or the Court of Sudder dewanny adawlut ; or His Majesty in Council, in the cases for which an appeal to him is provided by Regulation 16, 1797, and the Act of Parliament therein recited.—*Reg. 5, 1798, Sect. 5.—Ced. and Conq. Prov. Reg. 4, 1803, Sect. 14, Cl. 1.*

Provision for cases wherein neither appellant nor respondent may be able to give the prescribed security for staying the execution of decrees during appeals.

240. As cases may occur wherein neither the appellant nor the respondent may be able to give the prescribed security for staying the execution of decrees, or for the execution thereof in favor of the plaintiff, as provided in Section 2 of Regulation 13, 1796, and Section 3 of this Regulation, it is hereby enacted, that in all such cases, the property adjudged, shall be held in attachment during the appeal, until such time as one of the parties may be able to give the required security, by the Collector of the district wherein the land may be situated, at the expence of the party who may be ultimately declared entitled thereto ; and under the provisions contained in Regulation 45, 1793, relative to the attachment of lands for sale in pursuance of decrees of the Courts of justice, as far as the same are applicable. No attachment, however, is to be made by any Collector in the cases herein supposed until he receive a precept, requiring him to make the same, from the Zillah or City court wherein the original judgment in the cause may have been passed ; which precept shall state specifically the property to be included in the attachment, and shall require the Collector to continue the same till ordered to be withdrawn by a further precept from the court, to be issued either on the prescribed security being given by one of the parties, or on the cause being finally determined.—*Reg. 5, 1798, Sect. 6.—Ced. and Conq. Prov. Reg. 4, 1803, Sect. 12, Cl. 9.*

The collectors, under certain restrictions, to hold the adjudged property in attachment, in such cases.

Provisions of the two preceding sections to be held applicable to the provincial courts of appeal and S. D. A., in all cases of the continu-

241. The provisions contained in the two preceding sections, [vide the whole of Section 10, Chapter III.] shall be held equally applicable to the Provincial courts of appeal, and Sudder dewanny adawlut, in all cases wherein an attachment of property, made by a Zillah or City court, may be continued during the trial of an appeal before a Provin-

cial court, or the Court of Sudder dewanny adawlut; or in which those courts may judge it proper to order an attachment of property, in default of security being given, as required; either by the appellant or respondent in any depending appeal.—*Reg. 2, 1806, Sect. 7.*

ance of attachments in appealed cases, or in default of security.

## SECTION XVII.

### *Execution or Suspension of the Decrees of Zillah Courts, for Money or other Moveable Property, pending Appeal.*

242. The provisions contained in the preceding section not being applicable to the execution of decrees for money, or other moveable property, such decrees shall be stayed, or enforced, in cases of appeal, according to the rules now established with the following addition thereto.—*Reg. 13, 1808, Sect. 12, Cl. 1.*

Present rules for staying the execution of decrees during appeal, in cases for moveable property, to remain in force with the following addition.

243. The word “empowered” in Clause 5, Section 46, Regulation 23, 1814, is not considered as modifying the general rule in Section 12, Regulation 13, 1808, [that money decrees are to be stayed on security pending appeal,] which still is in full force.—*Con 272, 9th April 1817.*

The general rule that money decrees may be stayed on security in appeal is still in force.

244. The security to be given by appellants for staying the execution of decrees appealed from, in cases of money, or other moveable property, or by respondents, when such decrees are carried into execution during an appeal, shall be sufficient, in addition to the amount or value adjudged, to cover the interest that may be expected to arise upon the amount payable under the decree, if confirmed in appeal, according to the provision for adjudging interest in such cases, made by Section 3, Regulation 13, 1796, and Section 35, Regulation 4, 1803.—*Reg. 13, 1808, Sect. 12, Cl. 2.*

What security to be given by appellants in such cases

245. When personal bail or security for money or other property, may be demanded from a party in any original civil suit, or appeal, and he shall tender a deposit of money, or of promissory notes, or other obligations of Government, or any other sufficient money security, to the amount required, such deposit shall be accepted instead of hazirzaminny or malzanunny securities; and shall be carefully kept by the treasurer of the court; to be restored, or disposed of as the court may direct, on the termination of the cause, or whenever the purpose, for which the deposit is made, shall have been accomplished.—*Reg. 2, 1806, Sect. 8.*

Promissory notes or other obligations of govt or any other sufficient money security to be accepted, instead of hazirzaminny or malzanunny, when either of those securities may be demandable, from a party in civil suit or appeal.

Such securities to be kept by the treasurer of the court, & disposed of according to the direction of the court after the termination of the suit, or whenever the purpose of the deposit shall have been attained.

246. The Court, having had under consideration the fluctuating practice which obtains with regard to allowing or disallowing appellants to assign or mortgage their own lands in lieu of security pending the appeal, observe that Section 8, Regulation 2 of 1806, which authorizes the “deposit of money or of promissory notes or other obligations of Government or any other sufficient money security” in lieu of personal bail or security for money or other property, is silent in regard to an assignment of the land of the party assured. They further observe that the admission of such assignment is not fair to the respondent inasmuch as it deprives him of a portion of his security; for, in the event of the appellant being cast, the respondent might

The assignment by the appellant of his own lands as security to stay execution pending an appeal, is inadmissible.

always in the first instance come on his lands in satisfaction thereof; by the formal assignment he obtains no additional hold on them, while he is deprived of the benefit arising from the security of the lands of a third party. Under these circumstances the court deem the assignment or pledge of the lands of the appellant in lieu of security inexpedient, and of but doubtful legality.—*Con.* 1024, *Cal. C.* 8th July, *West. C.* 12th Aug. 1836.

Execution of decrees for money, or moveable property, must be stayed during appeal, if good and sufficient security be given.

247. No discretionary power is vested in the courts, with regard to the enforcement or staying execution of decrees for money, or other moveable property, in cases of appeal; and in such cases the decree cannot be carried into execution during the appeal, provided the appellant give good and sufficient security under the provisions of clause second, Section 12, Regulation 13, 1808, for performing the decision which may be passed upon the appeal.—*Con.* 106, 10th July 1812

### SECTION XVIII.

*Rules regarding the Property which is pledged as Security, pending an Appeal, and the Registry of it.*

Judges taking security in cases of appeal, to be careful that it be good and sufficient.

Measures to be adopted for this purpose.

248. The Judges of the several courts, by which security may be taken from appellants or respondents, for performing the decrees to be passed on appeals, are enjoined to be particularly careful in ascertaining that the security received is good and sufficient; and they are required, in all cases, to cause the nazar or other officers, by whom the property of the sureties may be ascertained, to deliver in as accurate a statement as can be obtained of such property: with a full report of the enquiry made respecting it; informing him, at the same time, that he will be held responsible for any wilful misrepresentation in his statement or report.—*Reg.* 13, 1808, *Sect.* 13

Additional rules regarding security furnished in civil suits

249. The following provisions are enacted in addition to the rules now in force regarding the security to be required from parties for the execution of decrees of the Civil courts, or for staying the execution of judgments in the civil suits during an appeal in such suits.—*Reg.* 26, 1814, *Sect.* 13, *Cl.* 1

Sureties prohibited from transferring their rights in any immoveable property on which their security may have been accepted.

250. All persons who may enter into security bonds for the purposes mentioned in the preceding clause, are prohibited from transferring, or from causing to be transferred, by sale, gift, mortgage, or otherwise, any land or other immoveable property belonging to them, and specified in the schedule of property on which their security may have been accepted, until the object of their security shall have been completely fulfilled.—*Ibid.* *Cl.* 2.

Explaining the purport and intent of the foregoing prohibition

251. This prohibition, however, shall not be construed to affect the legality of any private transfer or mortgage of such property, in cases in which the amount of any demand on the surety, which may eventually arise under the terms of the security bond, shall be duly discharged by him; but it is hereby declared, that no private transfer or mortgage of such property which may be made by a surety in the interval between the execution of the security bond and the final and complete enforcement of the judgment, shall be considered to bar the prior right of the court to hold the whole or any part of

such property answerable in the first instance for the amount of any demand upon it, which may eventually arise under the terms of the security bond, and which may not be duly discharged by the surety.—*Reg. 26, 1814, Sect. 13, Cl. 3.*

252. I am directed by the Court of Sudder dewanny adawlut to inform you that the factory of Serecole and its dependencies, situate in Zillah Jessore, was pledged by the late firm of Messrs. Palmer and Co. as security for execution passed by the court in favour of the respondent in the case of Baboo Ramehurn, mooktar of Baboo Madhub Suhai and Baboo Bancee Suhai, heirs of Baboo Doankadoss deceased, appellant, versus Joyekishen Doss, respondent, on its being appealed by Baboo Ramehurn to His Majesty in Council. The said factory being situated within the jurisdiction of the court, cannot, under the Regulations of Government, be sold or otherwise disposed of but with the aforesaid lien on it. I am therefore directed to request that in the event of its being sold or otherwise disposed of by you, you will inform the intending purchaser or person to whom it may be intended to transfer it otherwise than by sale, that the court have a lien on the factory until the appeal to the King in Council is determined in favor of the respondent, or, in the event of a decision being passed in favour of the appellant, until it shall have been fully satisfied by the respondent.—*Con. 659, 30th Sept. 1831.*

An indigo factory pledged to the court as security for the execution of a decree, pending an appeal to the privy council, can only be sold with the above lien upon it.

253. By Clause 2, Section 13, Regulation 26 of 1814, persons who may have become security for the execution of decrees of court, or for staying the execution of judgments in civil courts, are prohibited from transferring, or causing to be transferred, by sale, gift, or otherwise, any land or other immoveable property belonging to them, and specified in the schedule of property on which their security may have been accepted, until the object of their security shall have been completely fulfilled. Instances have however occurred in which the Court have reason to believe that persons have, unknowingly and unwillingly, purchased such property; and, under the present mode of conducting the proceedings in such cases, individuals have no effectual means of ascertaining whether the property they propose to purchase has, or has not been so pledged.—*Civ. Ord. Cal. and West. C. 17th Feb. 1837, par. 1.*

Under the present mode of conducting the proceedings, individuals cannot ascertain whether the property they wish to purchase has been pledged or not.

254. In order therefore to enable individuals to ascertain whether property is hypothecated to the courts, and with a view to check any fraudulent transfers of the same, the Court have considered it proper to adopt the following rules:—1st. Whenever a person shall pledge his land or immoveable property to the court as security, the nazir, after he has satisfied himself of the sufficiency thereof, shall recapitulate the contents of the title deeds in his kyfeut, stating that he has inspected them and that they are sufficient, agreeably to the Persian form annexed, marked C.—2d. The nazir shall also keep a register of all property pledged as security, agreeably to the form marked D., and shall allow persons desirous of ascertaining whether any particular property is pledged to the court an opportunity of inspecting it.

Course which the nazir is therefore to pursue to prevent the fraudulent transfers of property pledged as security.

Register to be kept by the nazir of such property.

FORM D.

1	2	3	4	5	6	7
Name of security	Particulars of the property pledged.	Number of case and names of parties in which security is given	Object of the security and amount, with the date of the order requiring it	Date of the security bond.	Date on which the security was finally settled	Remarks

—*Ibid, par. 2.*



When lands paying revenue are pledged to the court, a notification is to be sent to the collector, that if sold for arrears, the surplus may be held in deposit.

255. Whenever estates paying revenue to Government are pledged to the Court, a notification of the same shall be made to the Collector, with a request that in the event of a sale of the same for arrears of public revenue, he will hold the surplus proceeds in deposit, notifying the same to the Court, until the Court shall report that the security is released from responsibility.—*Cir. Ord. Cal. and West. C. 17th Feb. 1837, par. 3.*

[All these rules enacted regarding the execution or non-execution of the decrees of Zillah courts, pending an appeal to the Sudder, are by Act XXI 1837, Section 4, declared equally applicable to suits above the value of 5000 rupees, decreed by Principal Sudder Ameens when appealed to the Sudder Court.]

## SECTION XIX

*Rules to be observed in the Civil Court in Cases remanded for further investigation, or to be tried de novo.*

When a suit is sent back for re-trial, the whole case is re-opened unless the order restrict the enquiry to certain points.

The sudder court may thus restrict the enquiry to particular points.

256. When a suit is sent back for re-trial, unless the order specially restrict the enquiry to any particular point or points, the whole case must be considered as re-opened.—*Con. 1073, Cal. C. 10th, West. C. 24th Feb. 1837.*

257. It is competent to the Sudder dewanny adawlut, in remanding a case for re-trial to the Zillah court, to restrict the enquiry to any particular point or points.—*S. D. A. Sel. Rep. 30th June 1842, vol. 7, p. 107.*

A suit ordered to be tried *de novo* on the original stamp fee, owing to a departure from the regulations.

258. The decree of the court below being reversed by the Sudder dewanny adawlut owing to the proceedings in the Zillah court not having been conducted agreeably to the Regulations, it was ordered that the suit should be tried *de novo* on the original stamp fees.—*S. D. A. Sel. Rep. 10th July 1826, vol. 1, p. 173.*

Case in which a case was returned as incomplete for investigation on a particular point which the lower court had neglected to enquire into

259. The defendants in an action having advanced a plea which, if correct, would have barred the jurisdiction of the court trying the suit, but which that court neglected to enquire into, the Sudder dewanny adawlut returned the case as incomplete for investigation on that point.—*S. D. A. Sel. Rep. 21st Jan. 1841, vol. 7, p. 4.*

Zillah & city judges may send back cases for re-trial to the native judges.

260. The rules contained in Section 18, Regulation 4, 1803, (Section 18, Regulation 4, 1793,) must be considered applicable to the Judges of districts under Regulation 5, 1831, consequently they may send back cases for re-trial to the Native Judges.—*Con. 870, West. C. 21st Feb., Cal. C. 27th March 1831.*

When a case is remanded, the judge will call on the vakeels to state if they have received instructions and are prepared to go on with the case.

261. On a case being remanded for further investigation, or to be tried *de novo*, if the vakeels employed by the parties during the original investigation of the suit be in attendance, the Judge shall immediately on the receipt of the proceedings in his office, call upon such vakeels distinctly to state, whether they have received any instructions from their clients and are prepared to go on with the case, and if their answer be in the affirmative, no further notice to the parties shall be deemed necessary.—*Cir. Ord. West. C. 3d, Cal. C. 31st Aug. 1838, par. 1.*

Notices which the judge is to issue, if the vakeel is not in

262. Where the vakeel of the plaintiff may not be in attendance, or being in attendance may plead either that he has not received any instructions from his client, or that he is not

prepared to proceed with the case, the Judge shall not put off the case with a view to the vakeel making a reference to his client on the subject, but shall immediately cause a notice in either of the accompanying forms, marked A. or B., according as the case may be, to be served on the plaintiff in the usual mode, requiring him to proceed according to law; and if the plaintiff, having been duly served with a notice in the manner above stated, shall neglect to prosecute his suit, either in person or by vakeel, for the period of six weeks, calculated from the date of such service, the Judge shall proceed as directed in paragraph 2 of the Circular orders of the 5th November, 1812, declared applicable to original suits by the concluding paragraph of the same circular, by calling on the plaintiff to shew cause for his neglect, and on his failing to do so, shall dismiss his suit on default. [This Circular order of the 5th November, 1812, has been virtually repealed by Act XXIX. 1841.]

## A.

Whereas the case of \_\_\_\_\_ *versus* \_\_\_\_\_, wherein you are plaintiff, which was decided by this court under date \_\_\_\_\_, having been remanded by the court of \_\_\_\_\_ *for further investigation, or to be tried de novo*, with directions that it be restored to its original number on the file of this court, and it appearing on enquiry, that no vakeel is in attendance on this court to represent you in the suit, take notice therefore, that in the event of your failing to adopt measures, either in person or by vakeel, for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default, unless you show good cause to the satisfaction of the court for not having proceeded in it.

Notice to the plaintiff, A.

## B.

Whereas the case of \_\_\_\_\_ *versus* \_\_\_\_\_, wherein you are plaintiff, which was decided by this court under date \_\_\_\_\_, having been remanded by the court of \_\_\_\_\_ *for further investigation, or to be tried de novo*, with directions that it be restored to its original number on the file of this court, and it appearing on enquiry that the vakeel retained by you during the previous investigation of the suit, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case, take notice, therefore, that in the event of your failing to adopt measures for the prosecution of your suit for the period of six weeks, calculated from the date of the service of this notice, the said suit will be dismissed on default, unless you shew good cause to the satisfaction of the court for not having proceeded in it—*Cir. Ord. West. C. 3d, Cal. C. 31st Aug. 1838, par. 2.*

Notice to the plaintiff, B.

263. In the event of its not being found practicable to serve a notice on the plaintiff, the Judge, immediately on the receipt of the nazir's return to that effect, shall issue a proclamation, to be stuck up in the court-room, and on the outer door of the plaintiff's dwelling-house, or in some conspicuous place in the village where he resides, in either of the abovementioned forms, according as the one or the other may be applicable, requiring him to proceed according to law; and if the plaintiff shall fail to prosecute his suit, either in person or by vakeel, for the period of six weeks, calculated from the date of the publication, in the prescribed mode of such proclamation, the Judge shall proceed to dispose of the case in the manner laid down in the Circular order above quoted.—*Ibid, par. 3*

Proclamation to be issued if notice cannot be served on the plaintiff

264. Where the vakeel, employed by the defendant during the original investigation of the case, may not be in attendance, or being in attendance may plead either that he has not

Notice to be issued to the defendant when his vakeel is not in

attendance, or has no instructions, or is not prepared to carry on the case

received any instructions from his client, or that he is not prepared to proceed with the case the Judge shall not put off the case with a view to the vakeel making a reference to his client on the subject, but shall immediately cause a notice to be served, in the usual mode, on the defendant in either of the accompanying forms marked C. and D., according as the case may be, and shall observe generally the rules laid down in Sections 2 and 3, Regulation 2 of 1806, modifying Section 5, Regulation 3 of 1803.

C.

Notice, C

Whereas the case of \_\_\_\_\_ *versus* \_\_\_\_\_, wherein you are defendant, which was decided by this court under date \_\_\_\_\_, having been remanded by the court of \_\_\_\_\_ for further investigation, or to be tried *de novo*, with directions that it be restored to its original number on the file of this court, and it appearing on enquiry that no vakeel is in attendance on this court to represent you in the suit, take notice, therefore, that in the event of your failing to adopt measures either in person or by vakeel on or before the \_\_\_\_\_ to make answer in the said suit, the court will proceed to try the same ex-parte, and will give judgment in the same manner as if you had appeared, answered, and entered into proof

D

Notice, D

Whereas the case of \_\_\_\_\_ *versus* \_\_\_\_\_, wherein you are defendant, which was decided by this court under date \_\_\_\_\_, having been remanded by the court of \_\_\_\_\_ for further investigation, or to be tried *de novo*, with directions that it be restored to its original number on the file of this court, and it appearing on enquiry that the vakeel retained by you during the previous investigation of the suit, though in attendance, has not received any instructions from you, and that he is not prepared to go on with the case, take notice, therefore, that in the event of your failing to adopt measures on or before the \_\_\_\_\_ to make answer in the said suit, the court will proceed to try the same ex-parte, and will give judgment in the same manner as if you had appeared, answered, and entered into proof.—*Cur. Ord. West. C. 3d. Cal. C. 31st Aug. 1838, par. 4.*

The vakeels originally employed in the suit cannot be exempted from conducting it on its being remanded. They are not entitled to any extra fee for this additional labor.

265. Nothing in the foregoing rules shall be understood as exempting the vakeels, employed during the original investigation of a suit, from conducting the same on its return for further enquiry or to be tried anew, provided such should be the wish of the parties by whom they may have been retained, it being expressly declared by Section 34, Regulation 27 of 1814, that the vakeels are to make all motions, and do all acts that may be requisite relative to any suit in which they may have been entertained, not only during the trial of the suit, but after a decision shall have been passed, until the final judgment shall have been enforced; nor are the vakeels, engaged during the original investigation of a case entitled, under the Regulations, to any additional fee for the extra labor that may be imposed upon them in the further enquiry, or re-trial of the suit, the original fee being considered a full remuneration for their services until the case has been finally disposed of, and the courts should therefore strictly abstain from awarding them any additional compensation on such account.—*Ibid, par. 5.*

In a remanded case, the S. D. A. refunded the institution fee, and limited the vakeel to a half fee.

266. Where a case was remanded, on appeal, to the lower court, the Sudder dewanny adawlut refunded the whole of the institution fee, and limited the remuneration of the vakeel to one-half.—*S. D. A. Sel. Rep. 22d Feb. 1834, vol. 5, p. 342.*

267. A question having arisen, in regard to cases remanded back for re-trial, as to the competency of the court, to which they may be so referred, to adjudge the costs of the prior investigation inclusive of the costs of appeal, in addition to those incurred in the re-trial of the case, when no order may have been passed upon that point by the appellate court; I am directed to inform you that, with a view to ensure uniformity of proceeding in this respect, and to remove any doubts which might be entertained on the subject, the Court have been pleased to resolve, as a general rule, which they will observe in their future practice, that the order of the appellate court, remanding back a suit for re-trial, shall specify that the court to which it may be so referred, shall pass such order as may appear to it just and proper, subject to appeal in respect to the payment as well of its own costs, as of those already incurred by the parties in the progress of the suit through the different courts before which it may have been brought since the date of the original action; unless any special reasons should exist rendering it equitable, in the judgment of the appellate court, that the costs incurred up to the date of its decision should be borne either by one of the parties, or by the parties respectively, in which case the appellate court will direct the payment of the same accordingly.—*Cir. Ord. Cal. and West. C. 14th Nov. 1836.*

The court to which the suit is remanded will adjudge the costs of all the courts; unless it should appear to the appellate court that the costs should be borne by one of the parties, or by them respectively.

268. A Principal Sadder Ameen trying a suit sent back by the Sadder dewanny adawlut for re-trial is competent to adjudge the costs of all the courts in such manner as may appear just, his order being of course open to appeal — *Com. 1037, Cal. C. 10th Aug, West. C. 2d Sept. 1836.*

Idem

269. I am further directed to take this opportunity of noticing to you that cases of the above nature should invariably receive the earliest attention of the courts to which they may have been remanded, and no time should be lost in giving effect to the Court's orders, either for making further enquiry or re-trying the case. The Court observe that there are still several cases of this description pending on the files of some of the courts, which, with reference to the date on which they were returned, should long since have been disposed of; and they direct me to inform you that they will expect to receive from you, at the close of the current year, a full explanation of the causes which may have prevented the decision of any such cases, remaining undisposed of at that time, specifying the dates on which they were received back, and the measures since taken to prepare them for decision, a note should also be given in the monthly statements shewing the progress made subsequent to the date of the last report, towards the determination of any cases of the nature of those in question, which may be depending before yourself, or the courts subordinate to you.—*Cir. Ord. Cal. and West. C. 7th July 1837, par. 2.*

Cases remanded should receive the earliest attention of the courts. Any cause of delay to be distinctly explained

270. Cases remanded for further investigation, or to be tried *de novo*, are to be entered according to the years of their original institution, and not under those in which they were sent back. The date of the order remanding such cases, as well as that on which they reached the court to which they may have been remanded, should be given in the column of remarks together with a brief report of the measures adopted since their return to get them ready for hearing. An explanation is also to be given in the same column of the causes of delay in disposing of any cases which may have been pending, at the close of the month or year to which the

How cases remanded are to be entered.

Explanation of the cause of delay to be given in every case

statement may relate, for a longer period than a twelvemonth.—*Cir. Ord. Cal. C. 7th, West. C. 21st Dec. 1838.*

A return marked as below No 4, to be submitted every month.

271. I am directed by the Court to request, that you will submit regularly every month to this office, a return drawn out agreeably to the enclosed form, marked No. 4, commencing from the 1st proximo —*Cir. Ord. 19th March 1841, par. 1.*

It will shew the number of suits sent back by the zillah and city judges every month to the uncovenanted judges

272. The return will show the number of suits sent back every month by the zillah or city Judges to the Principal Sudder Amceens, Sudder Amceens and Moonsiffs for re-trial. The different headings have been made to correspond with the provisions of Clause 2, Section 2, Regulation 9, 1831, extended to zillah and city Judges by Act VII. of 1838; thus enabling the Court to ascertain the specific grounds on which the judgments appealed against have been considered to be erroneous and defective —*Ibid, par. 2*

This return will enable the zillah and city judges, and the superior authorities to form an accurate opinion of the character and qualifications of the uncovenanted Judges placed under their control, and as the returns will be carefully examined by the court, and will be invariably referred to in the preparation of the annual civil report, they rely confidently on your exertions to have the same prepared with the greatest possible care —*Ibid, par. 3.*

273. It appears to the Court, that this return will enable the zillah and city Judges, as well as the superior authorities to form a very correct opinion of the character, intelligence and legal qualifications of the several uncovenanted Judges placed under their control, and as the returns will be carefully examined by the court, and will be invariably referred to in the preparation of the annual civil report, they rely confidently on your exertions to have the same prepared with the greatest possible care —*Ibid, par. 3.*

A similar return will be prepared of cases remanded by the S. D. A. to the zillah and city judges, and P. S. A.

274. I am directed to inform you, that a similar return will be prepared in this office of the judgments sent back by order of the Court to the zillah and city Judges, and Principal Sudder Amceens for revision

No. 1

Return No. 1

RETURN of the judgments passed by the Principal Sudder Amceens, Sudder Amceens and Moonsiffs of the district of \_\_\_\_\_, in the month of \_\_\_\_\_ 18\_\_\_\_ in which instructions have been issued by the Judge to the Lower courts to revise the cases agreeably to the provisions of Act VII. 1838

1	2	3	4	5	6	7	8	9	10
Names of the Principal Sudder Amceen, Sudder Amceen or Moonsiff	Judgment manifestly unjust	Judgment at variance with the regulations	Judgment in opposition to the Hindu Law	Judgment in opposition to the Mohammedan Law	Judgment not proper to allow of the Law applicable to the case	Judgment passed without sufficient justification	Judgment pronounced on assumptions irrelevant or erroneous	Total sent back for re-trial	Remarks

—*Ibid, par. 4.*

275. The Court, having had occasion to notice the absence of explanation in the last column of the statement of cases remanded by the lower courts, prescribed by the Circular order, No. 142, dated the 19th March, 1841, desire me to request that you will, in future, show distinctly the causes which appeared to you to render a further investigation requisite.—*Cir. Ord. 23d Aug. 1844.*

The sillah and city judges will distinctly explain in their statement, the causes which rendered the further investigation requisite.

## SECTION XX.

### *Review of Judgment by the Zillah Judge.*

276. Any persons considering themselves aggrieved by a decree passed in a regular civil suit or appeal by a Zillah, City, or Provincial court, from which decree no further appeal may have been admitted by a superior court, and who from the discovery of new matter or evidence which was not within their knowledge or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against them, are at liberty to present a petition for this purpose to the court in which the decree in question may have been passed; such petition shall be written on stamped paper of the value prescribed in Section 18, Regulation 1, 1814 and shall be presented within the period of three calendar months, from the delivery or tender of the decree, which period shall be calculated according to the provisions of clause eleventh of Section 8 of this Regulation. —*Reg. 26 1814 Sect. 4 Cl. 2*

Provisions regarding the mode of applying for permission to review judgments from which no appeal shall have been permitted.

277. A plea of insanity set up by the plaintiff not having been investigated, a review was admitted and the case sent back for a new trial.—*S. D. A. Sel. Rep. 24th July 1822, vol. 5, p. 162*

Review of judgment admitted when a plea of insanity was not investigated.

278. A claim to *but mahabumance* having been dismissed, a review of judgment was admitted on a suspicion that the *pundit*, on whose *equashta* the special appeal was decided, had taken a bribe to induce him to give a favorable answer. But it appearing that his exposition of the law was correct, the judgment was confirmed.—*S. D. A. Sel. Rep. 30th June 1825, vol. 4, p. 70.*

Review of judgment admitted when the pundit was suspected of having taken a bribe to give a favorable answer.

279. Review admitted *ex-parte* on the ground of obvious error, without summoning the opposite party to shew cause.—*S. D. A. Sel. Rep. 19th July 1833, vol. 5 p. 307.*

Review of judgment admitted on the ground of obvious error.

280. The rejection by the Sudba dewanny adawlat of an application for a special appeal against a decision of a lower court does not bar a review of judgment by such court.—*Rep. Sum. Cases, 9th Aug. 1817.*

Review of judgment not barred by the S. D. A. rejecting a special appeal.

281. According to the provisions of Regulation 26, 1814, a special appeal cannot be granted from a decision on the ground of its awarding, to an auction purchaser, possession of certain lands, which lands, not being specified among the auction papers and in the plant under the denomination given them in the decree, are apparently different from those claimed; but this is a sufficient ground for recommending a review.—*S. D. A. Sel. Rep. 14th April 1816, vol. 2, p. 176.*

Particular case which may form a sufficient ground for recommending a review of judgment.

S. D. A. cannot direct a zillah or city judge to review his order passed in an appeal from the S. A.

Item

A summary appeal does not lie to the S. D. A. from the order of a zillah judge rejecting an application for reviewing his judgment.

Reasons on which an application for reviewing a summary order was rejected.

Summary suits open to a review of judgment.

Miscellaneous cases open to a review of judgment.

The order of a zillah judge dismissing a suit on default open to a review of judgment.

Provisions regarding the mode of applying for permission to review judgments from which no appeal shall have been preferred.

Provision for empowering the S. D. A. to grant a review.

282. It is not competent to the Sudder dewanny adawlut to direct a zillah Judge to review his order passed in an appeal, regular or special, from the decision of the Sudder Ameen.—*Rep. Sum. Cases*, 13th Feb. 1841, p. 3.

283. A zillah Judge having rejected an application for a re-hearing of his own judgment in an appeal from the Sudder Ameen, held that the Sudder dewanny adawlut had no jurisdiction in the case.—*Rep. Sum. Cases*, 5th Jan. 1842, p. 21.

284. A summary appeal does not lie to the Sudder dewanny adawlut from the order of a zillah Judge, rejecting an application for a review of his own judgment.—*Rep. Sum. Cases*, 13th Jan. 1842, p. 22.

285. An application for review of a summary order rejected, without enquiry into its merits, because, first, a copy of the order complained of had not been filed with the petition of review, and, secondly, because no reason was given for the delay in making the application.—*Rep. Sum. Cases*, 18th April 1842, p. 28.

286. The terms of the clause referred to in the margin [*viz.* Regulation 26, 1814, Section 4, Clause 2,] apply to "regular suits," but the Court has decided that the spirit of the rule is also applicable to "summary suits."—*Con.* 216, 27th July 1815.

287. Held, on a reference from the Judge of Behar, that the spirit of Clause 2, Section 4, Regulation 26, 1814, is applicable to miscellaneous cases.—*Con.* 1249, Cal. C. 13th Sept., West. C. 4th Oct. 1839.

288. Held, that the order of a zillah Judge dismissing a suit on default, or without any investigation of its merits, is open to review under the provisions of Section 4, Regulation 26 1814.—(*con.* 1269), West. C. 3d Jan., Cal. C. 7th Feb. 1840.

289. The courts are nevertheless authorized to admit applications for a review after the period abovementioned, provided that the parties preferring the same shall be able to shew just and reasonable cause to the satisfaction of the court for not having preferred such application within the limited period; in such case, however, the courts are enjoined to proceed with caution, and to state at large upon the proceedings, their reasons for admitting such applications after the limited period. If the courts shall be of opinion, that there are not any sufficient grounds for a review, they shall reject the petition, and their order to that effect shall be final; but if on the contrary, they shall be of opinion, that the review desired is necessary to correct an evident error, or omission, or is otherwise requisite for the ends of justice, they shall report the same to the Sudder dewanny adawlut, transmitting at the same time, a statement of the grounds of their opinion, with a copy of the petition presented to them, and a copy of the decree passed in the case.—*Reg.* 26, 1814, Sect. 4, Cl. 2.

290. The Court of Sudder dewanny adawlut, in cases referred to them under the preceding clause, as well as in all cases, in which a petition may be presented to them for a revision of their own judgments, which may not have been appealed to the King in Council, (or though appealed, the proceedings in which may not have been transmitted to the King in Council,) are authorized to grant the review desired, if upon a consideration of the reasons stated, the circumstances of the case shall appear in justice to require it.

The Sudder dewanny adawlut shall record on their proceedings the grounds upon which a review may be granted by them in each instance, and shall issue any instructions regarding the admission or rejection of new evidence in the case, which they may deem just and proper.—*Reg. 26, 1814, Sect. 4, Cl. 3.*

291. Whereas, it is expedient that the decisions of Courts of justice and the reasons for the decision should be written and signed by the Judge at the time of pronouncing his decision, and in the vernacular language of the Judge. It is hereby enacted, that in all the Presidencies so much of all decrees as consists of the points to be decided, the decision thereon and the reasons for the decision, and all injunctions for the revision of decrees in regular suits, and all orders for reviews of judgment, which shall be passed by Judges of the Sudder courts, or by Judges of Zillah and City courts, or by subordinate or Assistant Judges of zillahs, shall be written originally in English, and signed by the Judge or Judges at the time of pronouncing such decision and orders, and shall be translated into the vernacular language, commonly used in the court wherein the suit to which the decree or order relates, shall have been instituted; and the translation shall be incorporated in the decree.—*Act XII. 1843 Sect. 1.*

In decrees of sud-  
der court, &c. the  
points to be decided,  
the decision, and rea-  
son thereof, injunc-  
tions for revision of  
decrees, and orders  
for review of judg-  
ment, shall be written  
in English and signed  
by the judges, and  
afterwards translated  
into the vernacular  
language, &c.

292 The order of a Zillah or City court, or of a Provincial court, or of the Sudder dewanny adawlut, rejecting the petition for a review in the first instance, or of the latter court refusing to sanction a review when applied for by a lower court, shall not be construed to preclude the party from instituting a regular appeal, (if the case be appealable) in a competent court, subject to the conditions and rules prescribed by the Regulations in force for the admission of such appeals.—*Reg. 26, 1814, Sect. 4. Cl. 4*

The orders reject-  
ing applications for a  
review not to bar the  
right of a party to  
prefer a regular ap-  
peal

293. An instance having been brought to the notice of the Court, of a Judge erroneously conceiving himself authorized, under Section 4, Regulation 26, 1814, to review his orders without the previous permission of the Sudder dewanny adawlut, in cases in which the application for review may have been presented within the period of three months from the date of the order; I am directed to request, that if such has been the practice in your court, you will abstain from it in future.—*Ca. Ord. Cal. and West. C. 5th Dec. 1834*

A judge cannot re-  
view his own orders  
without permission of  
the S. D. A.

294 This applies particularly to applications from civil Judges for permission to review their judgments. Such applications should not be made unless the Judge has fully satisfied himself that a review is necessary for the ends of justice; and the grounds on which he has come to that conclusion should be distinctly stated in the letter. If, for instance, the plea be the discovery of new matter or evidence which was not within the knowledge of the party, or could not be adduced by him at the time when judgment was passed; the manner in which the new matter was discovered, and the cause of the inability of the party to produce the evidence in proper time, with the proof of the fact, should be clearly detailed, as well as the effect which the new matter or evidence would have in impeaching the propriety of the judgment. It is not intended by the foregoing remark to define all the grounds on which a review may be admitted, but to shew the nature of the information required by the Court, to enable them to judge of the necessity or otherwise of a compliance with the recommendation.—*Ca. Ord. Cal. and West. C. 27th Nov. 1835, par. 3*

Grounds on which  
the zillah and city  
judge should apply  
for permission to re-  
view his own judg-  
ment



Information which the Zillah and city judge is to give in the margin of the report admits with the application to review his own judgment

295. The Court request that whenever the Judges in the lower provinces may have occasion to submit an application, for permission to review a former judgment, they will state, in

- Thus -
1. Date of decree or order
  2. Date on which the decree or order was tendered or delivered
  3. Date on which petition seeking review was presented
  4. Value of stamped paper on which said petition is engrossed

the margin of the report, which they are required by paragraph 3 of the Circular orders Sudder dewanny adawlut, No. 160, dated 27th November, 1835, to forward, the date on

which the decree or copy of order, revision of which is sought, was delivered or tendered to the applicants, the date on which the petition soliciting review was presented, and the value of the stamped paper on which the said petition is engrossed. It has not unfrequently happened that, owing to the absence of information on the last head in the copies of papers submitted, a reference to the local Judge has been necessitated, with a view of ascertaining whether the provisions of Clause 1, Section 2, Regulation 2 of 1825, have been observed; the precautional measure hereby prescribed will obviate the necessity of such references while the insertion of the particulars mentioned will impose but little, if any, additional trouble on the Judges.—*Cir. Ord. 6th Sept 1843.*

Value of the stamped paper on which petitions to the S. D. A. for a review of the order rejecting applications for a review of judge must be written

296. Whereas it has been customary for parties petitioning for review of orders rejecting applications for a review of judgment to write their petition on stamped paper prescribed for miscellaneous petitions, viz two rupees' value, on the plea that three months have not elapsed since the date of the order to be reviewed, and whereas such petition, being in fact a second petition on the same subject, ought to be governed by the rules applicable to the petitions for a review in the first instance it is resolved, that every and each such petition, provided it be presented within three calendar months from the delivery or tender of the decree appealed against, may be written on stamped paper of the value of two rupees but, if preferred after the expiration of that period, all such petitions must be written on stamped paper prescribed in article 8, Schedule B, Regulation 10, 1829, with reference to the amount or order of the property adjudged against the party desiring the review, in like manner as if a regular appeal were preferred from such judgment, as required by clause 1st, Section 2, Regulation 2, 1825—*Con. 842, Cal. C. 1st, West. C. 29th Nov 1833.*

Such petitions in all practicable cases to be received and disposed of by the judge who passed the decision, subject to the regular course of appeal

297. It being [It is] the obvious intention of the rules referred to, that application for a review of judgment made in pursuance thereof, should, as far as practicable, be received and disposed of by the Judge or Judges who may have passed the decision, subject to the regular course of appeal, if the case be appealable to a superior court—*Reg. 2, 1825, Sect 3.*

Cases in which the officiating judge may receive and act upon applications for reviewing the judgment of his predecessor, absent on leave for more than six months.

298. It having been ruled by the court that in cases where a Zillah or city Judge may have obtained, and availed himself of leave of absence for a period exceeding six months, and there may be a reasonable probability of his remaining absent in excess of that period, it is competent to his successor, under the terms of Section 3, Regulation 2 of 1825, to receive and act upon any application which may be presented to him for a review of such Judge's decision without waiting for the expiration of the term of six months, I am directed to communicate the same to you as a rule of practice for your future guidance and observance on occasions of the nature referred to.—*Cir. Ord. Cal. and West. C. 7th June 1839, par. 1*

The judge will state the grounds which exist for not suppos-

299. You will be careful, whenever there may be occasion to apply for authority to admit a review of judgment under the above circumstances, to state the particular grounds that exist

for supposing that the Judge who passed the decision will not return until after six months shall have expired from his departure, in order that the superior court may be enabled to form an accurate opinion as to the propriety or otherwise of granting the review prayed for.—*Cir. Ord. Cal. and West. C. 7th June 1839, par. 2.*

300. If the zillah Judge dismissed the suit of the plaintiff on the strength of a decree of the Provincial court, and the latter decree should afterwards be reversed by the Sudder dewanny adawlut, this would be a good ground for the zillah Judge to apply for permission to review his judgment, and the Sudder dewanny adawlut would grant it. Had the plaintiff's claim been dismissed by a Sudder Ameen on the strength of a decree of the zillah Judge, subsequently reversed by the Provincial court, the plaintiff might apply for a summary appeal under Section 3, Regulation 26, 1814, as from a dismissal without an investigation of the merits of the case; or had he preferred a regular appeal, the fact stated would have been sufficient to authorize the admission of it, notwithstanding the expiration of the period allowed by the Regulations.—*Con. 551, 7th May 1830.*

301. On a reference from the Judge of Tinhoot, it was held by the Calcutta Court, in concurrence with the Western Court, that a judgment passed by an additional Judge during the time he officiated for the Judge of the district, is to be reviewed by the former if still attached to the district, and not by the Judge.—*Con. 1123, 29th Dec. 183*

302. Doubts have been entertained whether in a case in which the court has rejected an application for a special appeal from the decision of the zillah Judge in appeal from the original decision of a Principal Sudder Ameen; or in a case in which the court, under the power vested in them by Clause 2, Section 2, Regulation 9, 1831, have confirmed the original decision of a zillah Judge; the last order of the Sudder dewanny adawlut or the decision of the zillah Judge, is to be considered as the judgment which is open to review under the provisions of Section 4, Regulation 26 of 1814.—The Court are of opinion that as in the first instance no appeal has been admitted from the judgment of the zillah Judge, the Judge may, under the circumstances stated in Clause, 2 Section 4, Regulation 15, 1814, apply for permission to review his decision.—When, on the other hand, the Sudder court has confirmed a decision under the provisions of Clause 2, Section 4, Regulation 9, 1831, the order is to all intents and purposes a judgment, open to review by it (the Sudder court) only.—*Con. 1057, Cal. C. 11th, West. C. 25th Nov. 1836, par. 3.*

ing that his predecessor will return in six months.

Case in which the zillah judge would have good ground for applying to the S. D. A. for leave to review his judgment

A judgment passed by an additional judge while he officiated as judge, will be reviewed by him if still attached to the district, and not by the judge

Particular decision of the S. D. A. relative to applications for a review of judgment

## SECTION XXI.

### *Review of Judgment by the Zillah Court—Stamps.*

303. Such part of the second clause of Section 4, Regulation 26, 1814, as provides that the petition for a review of judgment, in the cases therein mentioned, shall be written on stamped paper of the value prescribed in Section 18, Regulation 1, 1814, [viz. now, the stamp ordained for miscellaneous petitions in Regulation 10, 1829, Article 7, Schedule B,] shall after the promulgation of the present Regulation be considered applicable only to petitions for a review of judgment, which may be presented, as required by the clause above noticed, within the period of three calendar months from the delivery of tender of the decree. Whenever the petition for a review of judgment may be pre-

Such part of cl. 2, sec. 4, reg. 26, 1814, as directs that petitions for a review of judgment shall be written on stamped paper of a prescribed value declared applicable only to petitions presented within a specified period

After which period they are to be written

on the stamped paper, prescribed by sec 13, reg. 1, 1814, but in case the petitioner be a pauper, the provisions of reg. 28, 1814, are declared applicable

sented after that period, it shall be written upon the stamped paper prescribed in Section 13, Regulation 1, 1814, [*now*, the stamp ordained for plaints and petitions of appeal in Regulation 10, 1829, Article 8, Schedule B,] with reference to the amount or value of the property adjudged against the party desiring the revision ; in like manner as if a regular appeal were preferred from such judgment ; unless the party desiring the review be a pauper, in which case the provisions relative to pauper appellants, contained in Regulation 28, 1814, shall be held applicable — *Reg. 2, 1825, Sect. 2. Cl. 1.*

Value of the stamp on which a petition for a review of an order remanding a case for irregularity, must be engrossed

304 Held, by a majority of the two Courts, that a case, without trial of the merits, being remanded for irregularity, either party being desirous of a review of that order, after the expiration of three months, must move the court by a petition, engrossed on a stamp of the value prescribed for petitions given after the period of three months by Clause 1, Section 2. Regulation 2, 1825 — *Con. 1375, West. C. 31st Jan., Cal. C. 24th Feb. 1843.*

Petitioners whose petitions may be rejected not entitled to receive back the amount of the prescribed stamped paper duty, but the courts empowered in special order at any portion not exceeding three-fourths of it

305. If the petition for a review of judgment, presented after the promulgation of this Regulation, shall be rejected by the court receiving the same, as not containing sufficient grounds for the review desired, the petitioner shall not be entitled to receive back the amount of the stamp duty, paid for the paper on which the petition may have been written ; but in the event of its having been written on the stamped paper prescribed in Section 13, Regulation 1, 1814, [*now* article 8, Schedule B, Regulation 10, 1829] the court, rejecting the petition, is vested with a discretionary authority (as in the case of special appeals, under the fifth clause of Section 2, Regulation 26, 1814,) in any particular instance, wherein the forfeiture of the entire stamp duty may appear excessive on due consideration of the circumstances of the case, to order the refund of any portion thereof not exceeding three-fourths of the total amount, from the public treasury.— *Reg. 2, 1825, Sect. 2, Cl. 2*

Courts empowered to impose a proportionate fine in cases where petitions are found to be groundless or litigious

306. When the rejected petition may have been written on the stamped paper prescribed in Section 13, Regulation 1, 1814 [*now*, article 7, Schedule B, Regulation 10, 1829] and shall be found by the court rejecting it, groundless and litigious : so as to merit a fine, in addition to the small stamp duty paid in conformity with that section, the court is authorized and required (as in the case of litigious summary appeals, by the tenth clause of Section 3, Regulation 29, 1814) to impose such fine as may be proportionate to the circumstances of the case, and the condition of the party not exceeding the amount of the stamp duty which would have been payable if the petition had been written on the stamped paper prescribed in Section 13, Regulation 1, 1814, [*now*, article 8, Schedule B, Regulation 10, 1829.]—*Ibid. Cl. 6.*

Courts after reviewing the case of a petitioner to pass such orders relative to the stamped duty paid by him as may appear just and equitable

307 When the petition for a review of judgment may be admitted, the court reviewing the case, will, on deciding it, pass such order relative to the stamp duty paid by the petitioner, as may appear just and proper ; whether for his reimbursement by the opposite party as part of the costs of suit ; or for the refund of any portion of it, not exceeding three-fourths, by Government.—*Ibid. Cl. 4.*

Though a petition for a review of judgment may be received

308. The enhanced cost attending the presentation of a petition after lapse of three months, is merely with reference to such delay, and the probable inconveniences that may attend it ;

and the court, to whom the petition for a review may be presented, is competent to reject it on any ground; it not being requisite, according to the rule contained in Clause 2, Section 4, Regulation 26, 1814, to admit a review, unless the parties preferring applications for the same shall be able to shew just and reasonable ground to the satisfaction of the court, for not having preferred such application within the limited period.—*Con.* 490, 15th Dec. 1828.

on full stamp after three months from the decree, the court is not constrained to receive it without just and reasonable ground for the delay.

309. It was resolved, with the concurrence of the Calcutta Court of Sudder dewanny adawlut, that documents filed with applications for a review of judgment under the provisions of Section 4, Regulation 26 of 1814, should be considered as exhibits, and made liable as such, to the rule contained in Article 5, Schedule B, Regulation 10 of 1829, in the same manner as if they had been filed or entered on the proceedings of the original suit, or when it was before the court in appeal, whether regular or special.—*Con.* 1058, *Cal. C.* 21st Oct, *West. C.* 18th Nov. 1836.

Documents filed with petitions for a review of judgment are considered as exhibits and liable to stamp duty

## SECTION XXII.

### *Review of Judgment by Principal Sudder Ameen.*

310. The rule contained in clause second, Section 4 of the aforesaid Regulation, [Regulation 26, 1814,] relative to the review of judgments, shall be held applicable to original suits and appeals tried by Principal Sudder Ameen.—*Reg.* 5 1831, *Sect.* 19, *Cl.* 1.

Review of judgment how to be applied to original suits and appeals tried by P. S. A.

311. If the Principal Sudder Ameen shall be of opinion that the review applied for ought to be admitted, he shall report the case to the zillah or city Judge, who is authorized to grant permission under the same rules as are prescribed by the existing Regulations in cases where similar applications may be made to the Court of Sudder dewanny adawlut.—*Ibid.*, *Cl.* 2.

Rules regarding review of judgments by P. S. A.

312. The Court are pleased to intimate, for the guidance of the Judges and Principal Sudder Ameen, that the liability of orders, passed by Principal Sudder Ameen in appeal, to be revised in special appeal by the Sudder dewanny adawlut only, does not debar the zillah Judges from receiving and disposing of applications for permission to review such orders in exercise of the authority expressly conferred upon them by Clause 2, Section 19, Regulation 5, 1831.—*Cir. Ord.* 4th April 1845.

The liability of the orders of the P. S. A. passed in appeal to be revised in special appeal by the S. D. A. does not prevent the judge's disposing of applications to review such orders.

313. The order of a zillah Judge dissenting from a Principal Sudder Ameen as to the propriety of a review of the latter's judgment on a reference made under Clause 2, Section 19, Regulation 5, 1831, is final, and not open to revision on appeal to the Sudder dewanny adawlut.—*Con.* 1294, *Cal. C.* 11th, *West. C.* 28th May 1841

The order of a zillah J. refusing to allow P. S. A. to review his judgment is not open to appeal

314. The order of a zillah Judge refusing to allow a Principal Sudder Ameen to review his judgment, is final.—*Rep. Sum. Cases*, 23d June 1841, p. 12.

Idem

315. All applications, for reviews of judgment in suits decided by the Principal Sudder Ameen, will be made direct to that officer, who will proceed agreeably to Section 19, Regulation 5, 1831, and when recommended to be admitted in suits above the value of 5000 rupees,

Applications for a review of his orders will be made to the P. S. A., and in cases above 5000 Rs.

he will refer them to the Principal Sudder Ameen will forward the application direct to this court.—*Cir. Ord. Cal. and West. C. 23d Feb. 1838, par. 7.*

In all suits exceeding the value specified in cl. 1, sec. 18, reg. 5, 1831, which shall, under sec. 1 of this act, be referred to a P. S. A., the appeal shall be direct to the court of S. D. A., and shall be conducted as if it were an appeal from a zillah Judge, and any application for a review of the decision upon such judgment shall be made by the P. S. A., to the court of S. D. A.

316. And it is hereby enacted, that in all suits exceeding the amount or value specified in clause first, Section 18, Regulation 5, 1831, which shall, under the authority of Section 1 of this Act, be referred to a Principal Sudder Ameen, the appeal from the decision of such Principal Sudder Ameen shall be direct to the Court of Sudder dewanny adawlut, and shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a zillah Judge to the said Court of Sudder dewanny adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder dewanny adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a zillah Judge.—*Act XXI. 1837, Sect. 4.*

Rules 298 and 299 of this chapter applicable to P. S. A.

317. I am desirous to add that the above rule and observations [Rules 298 and 299 of this Chapter] are equally applicable to the court of the Principal Sudder Ameen, to whom you are requested to make known the purport of these orders.—*Cir. Ord. Cal. and West. C. 7th June 1839, par. 3.*

## SECTION XXIII.

### *Appeal on an Award of Arbitration.*

Petitions of appeal from decisions founded on awards of arbitrators, to be dismissed with costs.

318. If a petition of appeal shall be preferred against the decision of any Zillah or City court founded on an award of arbitration, it is to be dismissed with costs, unless it be fully proved to the satisfaction of the court by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption, or partiality, in the cause in which they have made the award.—*Reg. 5, 1793, Sect. 28. Benares Reg. 8, 1795, Sect. 6.—Ced. and Cong. Prov. Reg. 4, 1803, Sect. 28.*

Exception to the rule.

Appeals against decisions founded on award of arbitration not to be dismissed without having been admitted.

319. Appeals against decisions founded upon award of arbitration not to be dismissed, under Section 28, Regulation 5, 1793, without having been admitted. See proceedings in case of Daveepersaud Sein v. Indrajeet Sing.—*Con. 18, 18th Sept 1809.*

An appeal from a decision founded on the award of an arbitrator may be admitted without proof of corruption or partiality.

320. By Section 28, Regulation 5, 1793, an appeal from a decision founded on the award of arbitrators may be admitted without, in the first instance, requiring proof of their corruption or partiality.—*S. D. A. Sel. Rep. 19th May 1809, vol. 1, p. 284.*

When an appeal is made from the decree of a zillah court founded on an award of arbitrators and said to be guilty of corruption, interest will be awarded, if the appeal is dismissed.

321. In the case of an appeal to the Provincial court from the decree of a Zillah court founded on the award of arbitrators alleged to have been guilty of partiality and corruption, should the charge not be proved, and the appeal be dismissed, interest should be awarded from the date of the zillah decree, under the general rule contained in Section 3, Regulation 13, 1796, even though the Provincial court did not go into the merits of the case.—*S. D. A. Sel. Rep. 17th Nov. 1810, vol. 1, p. 312.*

The judge's order for the execution of a private award not open to appeal the only mode in which it can be set aside.

322. The order of a zillah Judge for the execution of a private award of arbitration is not open to appeal. The award can only be set aside on proof, in a regular suit, that the arbitrators have been guilty of partiality or corruption.—*S. D. A. Sel. Rep. 8th Jan. 1820, vol. 3 p. 4.*

## CHAPTER VIII.

### EXECUTION OF DECREES

#### SECTION I.

##### *General Rules for the Execution of Decrees.*

1. The Zillah and City courts, the Provincial courts, and the Sudder dewanny adawlut shall not be required to carry into execution any decree, which may be passed in original suits, or in appeals, subsequently to the 1st of February, 1815, except in conformity with the following rules and provisions.—*Reg. 26, 1814, Sect. 15, Cl. 4.*

Courts not bound to execute decrees (except in conformity to the following rules) passed subsequently to the 1st of February, 1815.

2. Any party who may be desirous of obtaining the execution of a decree passed subsequently to the 1st of February, 1815, shall appear either in person or by an authorized pleader before the court by whom such decree may have been passed, or if the decree shall have been passed by a Sudder Ameen, before the zillah or city Judge, and shall present a petition written on the stamped paper prescribed in Section 18, Regulation 1, 1814, [*now*, Regulation 10, 1829.] praying for the execution of the decree.—*Ibid, Cl. 5.*

Parties desirous to have their decrees enforced, to present a petition to the court.

3. The petition shall state the number of the suit, the names of the parties, the date and substance of the decree, whether any appeal has been preferred or admitted from the decision, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; it shall further contain a statement of the specific amount due to the petitioner under the decree, whether on account of costs of suit, or otherwise, and the name of the individual, or individuals, against whom the enforcement of the decree is solicited.—*Ibid, Cl. 6.*

What the petition is to contain.

4. Much delay taking place and inconvenience being sustained by the omission of decree-holders to specify, in the petition presented by them to the Civil courts suing out execution of their decrees, the various particulars enjoined in Clause 6, Section 15, Regulation 26, 1814, the Court are pleased to promulgate the following rules of practice for general information, and to direct that the Judges forward a copy of them to each of the subordinate courts of their respective districts, with instructions to make them as public as possible.—*Cir Ord 22d April 1842, par. 1.*

Decree-holders will specify in their petition, the various particulars enjoined in reg 26, 1814, sec 15, cl 6

5. It is to be explained that the rules have equal application to petitions suing out execution of decrees of the Sudder dewanny adawlut, the Zillah and the inferior courts \*—*Ibid, par. 2.*

The rules apply equally to petitions for execution of the decrees of the S D A & the lower courts.

\* Clause 4, Section 15, Regulation 26, 1814, Section 22, Regulation 3, 1831, Section 7, Regulation 7, 1842

Any petition presented otherwise than in conformity with these rules will be put into the office without farther order recorded on it.

6. Whereas, the rule in Clause 6, Section 15, Regulation 26, 1814, requiring the statement of certain particulars by decree-holders, in the petitions suing out execution of their decrees presented to the several courts, is not generally observed, and its enforcement is requisite, the following instructions are promulgated for general information by the Court, and any petition hereafter presented otherwise than in conformity thereto, will be put into the office without any further order recorded on it.—*Cir. Ord. 22d April 1842.*

Stamped paper on which the petition for executing a decree must be written

7. Every decree-holder desirous of suing out execution of his decree, whether a pauper or otherwise, must write his petition on paper of the value prescribed for the court by which the decree may have been passed; viz. in the Moonsiff's court on plain paper, in the Sudder Ameen's, Principal Subler Ameen's and Zillah court, on eight anna stamp, and in the Sudder dewanny adawlut on paper value two rupees.—*Ibid, Rule 1.*

Tabular statement to be given at the head of every such petition

8. Each petition suing out execution is to have written, at its head, a tabular statement according to the form, and containing the particulars noted below :

Tabular form to be given at the head of every petition suing out execution of a decree

1	2	3	4	5	6	7*	8
Number of the suit.	Names of the parties	Date of the decree.	Subject of decree, that is, thing decreed	Appeal taken from the decision	Any and what adjustment of the matter in dispute since the decree	Statement of the specific amount due to the party suing under the decree	Name of the individual against whom the enforcement of the decree is asked
1	Sootaram, plaintiff, appellant, vs Ramshee, &c defendants, respondents	1st January 1841	Possession of mouzah Ramnagar, &c with mesne profits or rupees 2000 principal and interest	Not appealed.	No adjustment	2200 rupees	Ramshee Prakashjee Lohia, &c

—*Ibid, Rule 2*

Particulars required when the decree-holder moves for the issue of process of arrest, or for the sale of property

9. When the decree-holder may move for the issue of process of arrest against the opposite party, he will mention in the body of the petition presented to the local court (whether the court by which such decree may have been passed, or to which its execution may be referred) the residence of such party, and where the process of arrest is to be issued. When he may move for the sale of property, a schedule of the property, and where it is to be found, must be given at the foot of the statement, as well as the boundaries of any house, garden, or tract of land included in the schedule.—*Ibid, Rule 3.*

\* At the foot of the petition, the different items of which the specific amount entered in column 7 is composed, whether on account of principal, interest, costs of suit, mesne profits or otherwise, should be given in detail, with a specification of the dates from and to which interest or mesne profits may be claimed; in short, all such particulars as may elucidate the amount of the claim, and, in the event of any objections being taken to such amount by the opposite party, may tend to bring the matter in dispute to a distinct issue with a view to its speedy determination

10. The court, after causing the purport of the petition to be compared with the decree contained in the original record of the suit, shall proceed to execute the same in conformity with the provisions which are now in force or which may be hereafter enacted. —*Reg. 26, 1814, Sect. 15, Cl. 7.*

The court will then cause the decree to be executed.

11. It is hereby enacted, that it shall be competent to the zillah and city Judges within the Presidency of Fort William in Bengal, to refer to the Principal Sudder Amceens subordinates to them, applications for the enforcement of decrees, to be executed by the said Principal Sudder Amceens, under the rules prescribed in the general Regulations, applicable to such cases. —*Act V. 1836.*

Zillah and city judges may refer to the P. S. A. applications for the enforcement of decrees.

12. The court is then to cause the decree to be executed, if it be for a zemindary, independant or dependant talook, or other estate or real property, by causing possession of the property to be delivered to the person to whom it may be decreed; if it be for personal property or a sum of money, by causing the specific thing to be delivered, or the value of it, or the sum of money decreed, to be levied by public sale by auction of a sufficient portion, or, if requisite for the satisfaction of the decree, the whole of the lands, houses, and all other effects, either real or personal, belonging to the party against whom the judgment may have been given, or by the attachment of his person or where it may be necessary, both by the sale of his property and effects, and the attachment of his person. —*Reg. 1, 1793, Sect. 7. — Benares Reg. 8, 1795, Sect. 2. — Civil and Cong. Prov. Reg. 3, 1803, Sect. 9.*

Decree of the court how to be executed.

13. The Civil courts have the power of issuing process simultaneously against the person and property of a debtor in execution of a decree of court. —*Rep. Sum. Cases 5th July 1817.*

The civil courts may issue process simultaneously against the person and property of the debtor.

14. An order passed on the execution of a decree in regard to interest, wasilat, or any other matter in dispute between the parties to the suit, and carrying out the original intentions of such decree, cannot be considered as constituting a new cause of action, and is not subject, therefore, to a regular suit. —*Civ. Ord. Cal. and West. C. 11th Jan. 1839, par. 9.*

An order passed in execution of a decree regarding interest, wasilat, &c. is not a new cause of action, and is not subject to a regular suit.

15. Held, by the Western Court, in concurrence with the Calcutta Court, that any order passed in the execution of a decree in regard to mesne profits, interest or other matter in dispute between the parties to the suit, which may be involved in the decision, must be looked upon as a necessary process for carrying into effect the original intentions of the court passing the decree, in respect to a point, in which it may, in fact, be said already to have pronounced a formal judgment, and cannot, therefore, be considered as constituting a new cause of action. —*Con. 1129, 9th Feb. 1838.*

Idem

16. Personal property sold in execution of a decree should be paid for before delivery. If the *nazar* or other officer conducting the sale, deliver the property, and the purchaser refuse to pay the purchase money, the former will be compelled to make good the price, and will have to recover it from the purchaser in the regular course of law. —*Con. 787, 3d May 1833.*

Personal property sold in execution of a decree must be paid for on delivery. If the *nazar* disregards this rule, he must make good the price.

17. The Judge is competent, *with the consent of the parties*, instead of selling the estate of the debtor in satisfaction of the debt, to cause it to be attached until the amount due be realized from the proceeds. Such attachment must be made through the Collector. —*Con. 752, West. C. 21st Dec. 1832, Cal. C. 1st Feb. 1833.*

With consent of parties, the judge instead of selling the estate, may attach it till the amount is realized.



The civil court cannot stay the sale of a judgment debtor's property without the consent of the creditor.

In certain cases specified, the courts to make previous enquiries and to pass such orders as may appear just and proper, with regard to the execution of decrees.

18. The Civil court cannot stay the sale of a judgment debtor's property, and cause payment of the debt by the attachment of the same without consent of the creditor.—*Rep. Sum. Cases, 27th Sept. 1842, p. 39.*

19. Provided however, that if the suit shall have been tried *ex-parte*, or that an interval of more than one year shall have elapsed between the date of the decree, and the application for its execution; or that the enforcement of the decree shall be solicited against individuals being heirs or representatives of the original parties in the suit, or against one only of several individuals equally affected by the decree, or if there shall appear reason to believe that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing adjudged, or by the payment of the sum decreed either in whole or in any part, by kistbandy or otherwise, it shall be competent to the court, instead of proceeding to the immediate enforcement of the decree, to issue a notice to the party against whom execution may be sued out, requiring him to shew cause within a limited period to be fixed by the court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by vakeel, or shall not shew sufficient cause to the satisfaction of the court, why the decree should not be forthwith executed, the court will cause the judgment to be satisfied according to the rules in force. If the party shall attend in person or by vakeel, and shall offer any objection to the enforcement of the decree, the court shall issue such order after a due consideration of the circumstances of each case, as may appear just and proper.—*Reg. 26, 1814, Sect. 15, Cl. 8.*

Cl. 8, sec. 15, reg. 26, 1814, explained, and the several courts empowered to require security for making good decrees, or in failure thereof to cause an attachment of property

20. In explanation of the eighth clause of Section 15, Regulation 26, 1814, which provides that, in certain cases, "it shall be competent to the court applied to for execution of a decree, instead of proceeding to the immediate enforcement of the decree, to issue a notice to the party against whom execution may be sued out, requiring him to shew cause within a limited period to be fixed by the court, why the decree should not be executed against him," it is hereby declared that the above provision was meant to be imperative in the cases referred to, and not to leave a discretion with the court; at the same time, with a view to guard against abuses, it is now further provided, that, whenever it may be shewn, by satisfactory evidence, that the party against whom the decree was passed, or in the event of his decease, his legal representative who may have become answerable for the fulfilment of it, is about to remove, or dispose of, the property from which the judgment should be satisfied, the court, proceeding, as directed in the eighth clause of Section 15, Regulation 26, 1814, shall be authorized to require security in such amount as may appear sufficient for making good the decree; and in the event of such security not being given, to cause an attachment of property; as provided for in similar cases, whilst suit is depending, by Section 5, Regulation 2, 1806.—*Reg. 7, 1825, Sect. 7.*

On the failure to serve notice, as above, on the party, the issue of a proclamation is indispensable, but its purport might be included in the notice.

21. The following reference was made by the Judge of Futehpore:—"Whether in cases in which an *itlehnamah* in lieu of a *hokeemnamah* has been issued for the defendant to shew cause, &c. under Regulation 26 of 1814, Section 15, Clause 8, and Regulation 7 of 1825, Section 7, and such defendant be not met with, is it then incumbent on the court issuing the process, to issue a proclamation or not?"—It was held that on the contingency contemplated by the Judge,

viz. the failure to serve a notice on the party, occurring, it is incumbent to issue a proclamation, but that the object would be best answered by including its purport in the notice, which should be accompanied by a perwannah to the nazir, instructing him, in the event of personal service being impracticable, to affix the process to the defendant's house.—*Con. 1236, West. C. 19th July, Cal. C. 16th Aug. 1839.*

22. The preceding rules shall not be construed to prevent the courts from issuing process of execution, for the purpose of recovering any fees or costs which may be due to Government or any fees due to vakeels by a party in a suit, whether decided before or after the 1st of February, 1815. In such cases, as well as in suits, in which a party may have been allowed to plead in formâ pauperis, the courts shall proceed without any application from the parties to enforce execution of the judgment so far as relates to the recovery of the amount of fees, or costs due to Government, or to pleaders in the suit.—*Reg. 26, 1814, Sect. 15, Cl. 9.*

Provisions for recovering costs due to govt., and vakeels' fees, and for executing decrees in pauper suits

23. The Court deem it proper that all papers relating to the execution of the same decree be kept in one nuthee, or bundle, with the proceedings in the cause to which the decree has reference; and they direct that you enjoin the observance in future of this practice in all the courts subordinate to your jurisdiction —*Cr. Ord 28th May 1821, par. 2.*

All papers relating to the execution of the same decree to be kept in the same nuthee

24. They further think it desirable, that the register of applications for execution of decrees and of proceedings held thereupon should be kept in the whole of the Civil courts under this presidency, in a uniform manner, and for this purpose they direct me to forward to you the accompanying form of register to be kept for each court, and in separate books for decrees passed by the zillah and city Judges, their Register, the Sudder Ameen and the Moonsiffs respectively.

The register of applications for execution of decrees and proceedings should be kept in a uniform manner

*Form of Register of Applications for the Execution of Decrees passed by the Judge of the Zillah of — — —*

Form of register

1	2	3	4	5	6	7	8	9	10	11	12
Number and date of application.	Number and date of decree.	Names of parties.	What decreed, and to whom.	Process issued in execution, and on what dates.	Return to process, and on what dates received.	Petition of claimants to property attached, and when filed.	Orders for sale or release of property with dates.	Sums realized, and in what parts devoted in execution, with dates of receipts of each.	Parties confined in execution, with date of order for their being sent to jail.	Date of order for their release.	Miscellaneous orders and remarks.

—*Ibid, par. 3.*

NOTE — A registry book, containing a numerical register, according to this form, to be kept for each court, and separate registers to be kept for the decrees passed by the zillah or city Judges, their Register, the Sudder Ameen and the Moonsiffs respectively

But this is not to prevent the judge's introducing into the register, any farther columns or subdivisions, calculated to promote the object.

25. I am desired, however, to state for your information, and that of the several courts within your jurisdiction, that in proscribing this general form for your and their observance, for the sake of uniformity, it is not meant to preclude the Judges of any courts from introducing into their respective registers any further columns or subdivisions which they may on experience find calculated to promote the important object for which the register is proposed, namely, the prompt and due execution of the judgments of the Civil courts, in all cases wherein application may be made for that purpose, in pursuance of Section 15, Regulation 26, 1814.  
*Cir. Ord. 28th May 1821, par. 4.*

The terms of a decree, when specific, and not those of the documents on which it is founded, will regulate the execution. A decree against a European British subject must be enforced as one against a native.

26. In the execution of a decree, its terms, when specific, and not those of the documents on which it is founded, are to regulate the course of execution.—*Rep. Sum. Cases, 26th July 1817.*

27. A decree passed against an European British subject must be enforced in the same manner as one against a Native.—*Con. 786, 3d May 1833.*

## SECTION II.

### *Property which may be and may not be sold in Execution of a Decree.*

What land of a defaulter can be sold in execution of a summary decree.

28. The land of the defaulter other than that for which the balance is due cannot be sold in execution of a summary decree: but his interest in that for which he is in balance, may be sold, as well as his chattels.—*Con. 1, 11th Jan. 1803*

Sale of the defendant's talook, or other transferable tenure.

29. When a summary judgment has been given, the defendant's *talook* or other transferable tenure, for the rent of which judgment has been passed, may be sold at the conclusion of the current year. But the Judge is not authorized to direct the Collector to sell on the mere allegation of a balance due, without any enquiry.—*Con. 128, 8th July 1813.*

Real property cannot be sold in execution of a summary decree.

30. Real property cannot be sold in execution of a summary decree.—*Con. 196, 13th March 1829*

Execution of decree against the property of a resident of Calcutta bound beyond its limits.

31. A decree against a resident of Calcutta may be executed against any property belonging to him that may be found beyond the limits of Calcutta. [See Act XXIII. 1840.]—*Con. 721, Cal. C. 5th Oct., West. C. 9th Nov. 1832*

Conditions attending the sale of mortgaged property

32. Mortgaged property may be sold in execution of a decree obtained by other than the mortgagee with a reservation, however, of his rights and interest.—*Con. 856, 24th Jan. 1831*

Rule regarding the pay, person and property of a sepoy.

33. The pay of a sepoy cannot be attached in execution of a decree: though the creditor may proceed against the person and property of the sepoy as in any other case.—*Con. 1175, West. C. 31st Aug., Cal. C. 27th Sept. 1838.*

Wuqf property cannot be sold in execution of a decree.

34. *Wuqf* property [in the present instance appropriated for the support of a *musjid*] cannot be alienated or sold in execution of a decree.—*Con. 1166, West. C. 20th July, Cal. C. 17th Aug. 1838.*

Sale of a contingent interest in execution of a decree, inadmissible.

35. An order passed in the execution of a decree, for the sale of a contingent interest was reversed by the Sudder dewaunee adawlut, who directed "the rights and interest" in existence to be sold.—*Rep. Sum. Cases, 8th July 1814, p. 59.*

36. Supposing the holder of a former decree to have made the prescribed application, and no other property is forthcoming from which the decree passed in his favour can be satisfied, the Court are of opinion, that he would have an equitable claim to attach the property receivable by his debtor, under the judgment in favour of the latter, and to cause execution accordingly, unless good and sufficient reason against the enforcement be shewn by the party against whom such judgment may have been passed.—*Con. 293, 9th July 1818, par. 3.*
37. Held, on a reference from the Judge of Cawnpore, that unproved claims of B against C., may be considered as assets available in the execution of A.'s decree against B., and be sold by auction; when the auction purchaser would acquire the right of demanding payment from C. or in the event of non-payment, of suing him for the recovery of the debt.—*Con. 1248, West. C. 6th Sept. 1839, Cal. C. 3d Jan. 1840.*
38. Held, further that the same principle is applicable to proved claims in respect to which a decree has already passed, the auction purchaser possessing in this instance a right to sue out execution of decree in the same manner as the original decree-holder.—*Ibid.*
39. The profits of the turn of service of a Brahmin officiating at an idol temple, cannot be attached in satisfaction of a decree for a private debt.—*Rep. Sum. Cases, 19th May 1811, p. 10.*
40. Held, on a reference from the Session Judge of Beerbhoom, that crops grown on lands allotted to village chowkedars for their maintenance cannot be exempted from liability to sale, in satisfaction of decrees issued against their owners.—*Con. 1212, West. C. 19th April, Cal. C. 12th July 1839.*
41. I am directed to state that the prohibition contained in the Regulation [Regulation 5, 1812, Section 14,] against the sale of implements of agriculture, relates merely to sales for arrears of rent or revenue; the Moonsiff therefore was competent to sell such property in execution of a decree, against which no such prohibition exists.—*Con. 962, West. C. 26th June, Cal. C. 31st July 1835.*
42. I am directed to inform you that the Court are of opinion that the right and interest of a jotedar may be sold in satisfaction of a decree.—*Con. 890, Cal. C. 11th July, West. C. 5th Sept. 1831.*
43. Land belonging to a Mahomedan, which is occupied by tombs, cannot be sold in execution of a decree.—*Rep. Sum. Cases, 21st Nov. 1812, p. 10.*
44. A Zillah court cannot sell, in execution of its own judgment, property, in the possession of an assignee appointed by the Insolvent Court in Calcutta.—*Rep. Sum. Cases, 4th April 1836, p. 10.*
45. The petitioners (Hindoos) having obtained a decree declaratory of their right to claim the performance of certain ceremonies by the members of their family, and damages for omission to perform them; the Sudder dewanny adawlut held that it could be enforced only in regard to the damages and costs of suit, and that each subsequent refusal to perform the rites constituted a separate ground of action.—*Rep. Sum. Cases, 5th Jan. 1812, p. 21.*

Decree-holder may attach the property receivable by his debtor, when no other property is forthcoming.

Unproved claims of B against C are available for the execution of A's decree against B.

Proved claims are also available for the execution of decrees. Right acquired by him who purchases them at auction.

Profits of a turn of service of a brahmin at an idol temple not saleable in execution of a decree.

Crops on chowkedar lands may be sold in execution of decrees.

Moonsiff may sell implements of agriculture in execution of decrees.

The right and interest of a jotedar may be sold in execution of a decree.

Mahomedan cemetery cannot be sold in execution of a decree.

Zillah court cannot sell to satisfy its own decree, property vested in the Insolvent court in Calcutta.

Use of enforcing a decree obtained by Hindoos declaring their right to the performance of certain ceremonies.

One collector cannot sell in execution of a decree of court property situated within another collectorate.

A govt. pension cannot be attached in execution of a decree of court.

Idem.

Salary of a military officer cannot be attached in execution of a decree of court.

Rules regarding the attachment of the salaries of public servants in execution of decrees of court.

Idem.

Idem.

46. It is irregular for a Collector to sell, in execution of a decree of court, property situated within the fiscal jurisdiction of another Collector.—*Rep. Sum. Cases, 7th Sept. 1841, p. 16.*

47. Held that a pension granted by Government is not liable to be attached in satisfaction of a decree of court; and is payable only to the party to whom the Government may have assigned it.—*Rep. Sum. Cases, 6th April 1839, p. 19.*

48. The Court have ruled that pensions granted by Government are not liable to attachment in satisfaction of decrees of court.—*Con. 788, 3d May 1833.*

49. It is not competent to a court to attach the salary of a military officer in execution of a decree of court.—*Con. 902, West. C. 26th Sept., Cal. C. 24th Oct. 1834.*

50. I am directed by the Court to acknowledge the receipt of your letter of the 15th ultimo, regarding the attachment of the salaries of public servants in execution of a decree. In reply, I am directed to state that any sum of money actually due to a public servant, on account of salary, is liable to attachment, in the same manner as other property; you are therefore at liberty to attach such money, and to call on the disbursing officer to assist you in effecting the attachment, and such disbursing officer is required to give his assistance. Should the amount of salary actually due be insufficient to satisfy the decree, process can be immediately issued against the person of the defendant.—*Con. 827, 9th Aug. 1833.*

51. It being deemed desirable, with a view to prevent inconvenience, to define and limit the course of proceeding to be followed by heads of offices, on requisitions being made to them for the deduction of the salaries of their subordinates in satisfaction of decrees of court, the Courts of Sudder dewanny and Nizamat adawlut at Calcutta and Allahabad call the attention of the authorities under them to the following rule.—*Cir. Ord. 20th Jan. 1843, par. 1.*

52. In cases of the nature described, officers should abstain from passing any orders, or making any requisitions, except regarding monies which may be in any office actually due to a defendant, unless both parties appear and agree to a compromise and assignment; in which case the duty of the Judge or officer sending the requisition will be confined to making known to the head of the office, to which defendant may belong, that such an arrangement has been made, at the same time striking the case off his file, and leaving the completion of the arrangement to the parties concerned.—*Ibid, par. 2.*

### SECTION III.

#### *Miscellaneous Decisions regarding the Execution of Decrees.*

Execution of a decree adjudging land, may be taken out notwithstanding its re-emption.

The mere institution of an action for real property no bar to the sale of the defendant's rights and interests in it.

Particular case of the execution of a decree against lands

53. Execution of the decree of a Civil court, adjudging land to a party, may be taken out notwithstanding its re-emption and assessment.—*Rep. Sum. Cases, 5th April 1847.*

54. Held, that the mere institution of an action for real property, is no bar to the sale of the rights and interests of the defendant in such property, in execution of a money decree given against him.—*Rep. Sum. Cases, 14th April 1841, p. 6.*

55. A. obtained a decree awarding him possession of a village wrongfully included by B. in his talook. B. appealed, but his talook having been sold for public revenue, he neglected

to carry on his appeal which was dismissed. B. having subsequently obtained a reversal of the public sale, it was held that A. might obtain possession of the village in execution of his decree without a new suit.—*Con.* 999, *Cal. C. 8th Jan., West. C. 5th Feb. 1836.*

56. A forfeited deposit, ordered by the Government to be refunded to the party mulcted, was attached by order of the Civil court in execution of a decree, but subsequently applied, by the Collector, to the discharge of the Government revenue due on estates, the property of the party to whom the refund was to be made. Held by the Sudder dewanny adawlut that the Collector had no power thus to set aside the attachment of the court.—*Rep. Sum. Cases, 11th July 1843, p. 51.*

A collector has no power to set aside the attachment of the court.

57. The *talook* or other transferable tenure cannot be sold if the defaulter tender the balance adjudged to be due.—*Con.* 130, *15th July 1813.*

A transferable tenure cannot be sold if the defaulter tender the balance due.

58. A debtor, declared by a decree jointly responsible with others, cannot claim exemption from further liability on depositing what he considers to be his share of the debt.—*Rep. Sum. Cases, 23d Aug. 1841, p. 15.*

A debtor, jointly responsible with others cannot shake off liability by depositing his supposed share.

59. Execution of a decree against a Hindoo widow personal to herself, cannot be summarily had, after her death, against the estate of her husband, in possession of the son adopted by her with her husband's permission. The decree-holder may try the question of the liability of the property by a regular suit.—*Rep. Sum. Cases, 26th May 1841, p. 10.*

A decree against a Hindoo widow cannot be summarily executed against her husband's estate in possession of her adopted son.

60. A decree cannot be enforced against a person not a party to it.—*Rep. Sum. Cases, 15th March 1842, p. 25.*

A decree cannot be enforced against one not a party to it.

61. A plaintiff having been nonsuited in an action for debt, and made chargeable with costs, sues again and obtains a decree. In the meanwhile the defendant sells the decree in the nonsuit, to a third party. Held, that the sale, being evidently collusive, is no bar to the amount of costs due on the first decree being considered so far as set off against the amount due on the second decree.—*Rep. Sum. Cases, 27th Oct. 1846, p. 86.*

The amount of costs due on a first decree is considered so far as set off against the amount due on the second decree.

62. Held on a reference from the Judge of Futehpore, that in the event of A. endorsing over a decree passed in his favor to B, it is essential to the formal recognition by the Civil court to such a transfer, that A. the transferring party, should certify in person or by mookhtar, appointed for that special purpose, either verbally or by petition, his having made the transfer to B, whose name should then be inserted, in place of that of the original decree-holder, in the execution of decree process.—*Con.* 1341, *West. C. 20th May, Cal. C. 17th June 1842.*

Mode in which A may endorse over to B, a decree passed in his (A's) favor.

63. Execution of a decree revived after adjustment, it being shown that the terms of the adjustment had not been complied with by the debtor.—*Rep. Sum. Cases, 8th Feb. 1847.*

Where the terms of an adjustment had not been complied with, execution of a decree may be revived after adjustment.

64. An adjustment between parties after judgment and execution sued out, held under the circumstances to supersede the judgment and to bar the revival of execution notwithstanding the alleged evasion by one of the parties of the terms of the adjustment.—*Rep. Sum. Cases, 9th Feb. 1847.*

Case in which an adjustment between parties after judgment, and execution sued out, bars the revival of execution.

65. The Judge of West Burdwan asked the opinion of the Sudder dewanny adawlut, in regard to the course to be pursued under the circumstances stated in the following extract from his reference: "It appeared from the enquiry held by me, in consequence of a petition presented to me by Dahooram Shaha, that, on the 6th June, 1810, he instituted a suit in the

When a decree-holder has been defrauded of the property decreed him, he must file a regular suit against the colluding parties, and,

pending it, the property may be attached.

Moonsiff's court at Sonamookhy, against Gunness Gurrain, for rupees 196, and that the latter, with a view to evade the execution of any decree that might be passed against him, got a relation of his own named Gopaul Gurrain, to file a fictitious suit against him before the Moonsiff of Burjorah on the 5th of the same month, in which on the 8th idem he put in a collusive "Iqbal davee," admitting the fictitious claim, and pledging the *whole* of his property in satisfaction of it, on the strength of which a decree was passed on the same day in his favour." He was informed, that under the circumstances stated, the aggrieved decree-holder should be referred to a regular suit against the colluding parties, for all damages that he may have sustained by their fraudulent proceedings, pending the issue of which the whole of the property in question might be attached, and the interest of the decree-holder protected.—*Con. 1299, Cal. C. 14th, West. C. 25th June 1841.*

A pauper decree-holder must be put in possession by a govt. officer, and the party cast will pay the costs.

66 I am directed to communicate to you the opinion of the Court that a pauper decree-holder should be put in possession of the property decreed to him, by a Government officer, the cost being made chargeable to the party cast.—*Con. 1186, West. C. 2d, Cal. C. 16th Nov. 1835.*

Any number of decree-holders attaching the same property may be sued in the same suit.

67. Any number of decree-holders, attaching the same property, may be sued in the same plaint by a party laying claim to it.—*Rep. Sum. Cases, 31st Jan. 1842, p. 23.*

Order in which a decree is to be executed against the heirs of a nazir.

68. Rule regarding the order in which a decree is to be executed against the heirs of the nazir of a Civil court, who had given in a false report of a surety's property.—*Rep. Sum. Cases, 14th April 1841, p. 5.*

Property decreed may become the subject of a fresh suit for the adjustment of its shares among the decree-holders.

69. Property having been decreed, may become the subject of a fresh suit between members of the successful party, for the adjustment of their respective shares in it.—*S. D. A. Sel. Rep. 16th May 1845, p. 207.*

A decree-holder, who sued out execution against the grandson of the party cast, four years after the date of the decree, was referred to a regular suit.

70. Four years after the date of a decree for money, the decree-holder sued out execution against a grandson of the party against whom the decree was given : as the case involved a point of Hindoo law, which could not properly be determined in a summary suit, the decree-holder was referred to a regular suit, to prove the liability of the person from whom he claimed the amount adjudged.—*S. D. A. Sel. Rep. 20th Aug. 1849, vol. 2, p. 303.*

The institution of a suit between co-debtors does not bar the execution of the decree obtained by the creditors.

71. The institution of a suit, between co-debtors, arising out of a judgment given against them jointly in favor of a creditor, is no bar to the execution of the decree obtained by the latter.—*Rep. Sum. Cases, 18th Jan. 1842, p. 23.*

A farmer cannot be ousted during his engagement by one who has obtained a decree against his lessor.

72. A farmer cannot be ousted during the period of his engagement, by a party who has obtained a decree against his lessor, *merely* on the ground of such decree.—See Construction 540.—*Rep. Sum. Cases, 26th April 1841, p. 8.*

Particular case of execution of decrees decided by the S. D. A.

73. Judgment of the Provincial court, in favour of A, who claimed an estate of B, was executed on the security of C.; who stipulated to hold the estate and profits to abide the result of B's appeal. The Sudder dewanny adawlut reversed the judgment, and B. in execution of its decree, obtained an order to levy an adjudged award of mesne profits from A. and C. After this A. sued C. on his acknowledgment of profits for two years, exceeding the sum awarded to B. for four years. B. intervened and claimed the sum sued for. Held, that B. is entitled to a judgment against C., who may set off judgments by him held for advances made to A.; and B. by merely intervening cannot obtain an award for excess of profits.—*S. D. A. Sel. Rep. 31st July 1832, vol. 5, p. 218.*

## SECTION IV.

*Sale of Houses, Orchards, Gardens, or small Portions of Rent-free Land in execution of a Decree of Court, by the Civil Authorities.*

74. Such parts of Regulation 45, 1793 ; Regulation 20, 1795, and Regulation 26, 1803, or of any other Regulation in force, relative to the sale of lands, in satisfaction of decrees of the Courts of civil judicature, as require that sales of landed property, in execution of such decrees, shall be made by the Collectors of the public revenue, or other officers of Government in the revenue department, are hereby explained and modified, as follows.—*Reg. 7, 1825, Sect. 2, Cl. 1.*

Parts of the regulations in force relating to sale of lands, in satisfaction of decrees of courts, explained and modified.

75. The rules contained in the Regulations abovementioned shall not be considered applicable to the sale of houses, gardens, orchards, and small portions of land held exempt from the public assessment : the sale of which, when requisite in execution of any decree, or other judicial process, shall be made, as heretofore, by order of the court, or officer, empowered to enforce the decree, or process, without application to the Board of Revenue or the Collector of the district, or other officer in the revenue department.—*Ibid, Cl. 2.*

Sales of houses, gardens, orchards, and small portions of lakhiraj land in execution of decrees, to be conducted under the authority of the judicial officers.

76. The Judge, Register, or other officer, empowered, under the Regulations, to enforce a decree, or other judicial process, by a sale of property, is authorized to cause the public sale of any house, garden, orchard, or small portion of lakhiraj land, which may be liable to be sold in execution of the decree, or other process, in like manner, as he is authorized to cause the public sale of any personal property liable to be sold in execution of the same.—*Ibid, Cl. 3.*

The sale of landed property under a judicial process to be conducted under the same forms as sales of personal property.

77. I am directed to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that the Court, having considered the wording of the preamble, and of the second clause of Section 2, Regulation 7, 1825, in connection with that of the third clause of Section 2, and of the first clause of Section 3, are of opinion that houses, gardens, orchards, and small portions of land exempt from public assessment, are to be sold in the same manner as personal property by the Civil courts.—*Con. 933, Cal. C. 20th Feb, West. C. 20th March 1835.*

Houses, gardens, orchards and small portions of free lands will be sold by the civil courts, like personal property

78. The Judges and Registers of the Zillah and City courts, who usually employ the nazirs of those courts, or the Sudder Amceens at the station of the Judge and Register and the local Moonsiffs in other parts of their jurisdictions, to conduct the public sale of personal property in execution of decrees, or other judicial process, are hereby authorized to employ the same officers, when it may appear expedient, in the public sale of houses, gardens, orchards, or small portions of lakhiraj land, under the provisions of this Regulation.—*Reg. 7, 1825, Sect. 3, Cl. 1.*

The same officers to be employed in the sale of houses, &c. as in the sale of landed property.

79. I am directed to refer you to the provisions of Section 3, Regulation 7, 1825, where in you will find recognized the practice alluded to by you, of employing the nazirs in the at-

Nazirs may be employed in the attachment and sale of pro-



perty, but will receive no commission.

attachment and sale of property ; but the Court are of opinion, that those officers are not entitled to receive any commission on the proceeds of such sales, the rule cited by you with regard to *Moonsiffs*, who are not, in the discharge of their ordinary functions, ministerial officers of the courts, not being analogous to the case in point.—*Con. 509, 29th May 1829.*

A proclamation to be issued 30 days previously to the sale of such property

80. In all cases of attachment and intended sale, whether of personal property, or of the landed property above described, in execution of any decree, or other judicial process, a proclamation of the intended sale, with particulars of the time and place of sale, of the property to be sold and of the amount due, for the recovery of which the sale is ordered, shall be made, in the current language of the country, for at least thirty days, before the appointed day of sale, exclusive of the day of sale, and the date on which the proclamation may be ordered. Such proclamation shall be made, in the usual mode, by beat of drum, on the spot where the property is attached ; and a written notification, to the same effect, shall also be affixed in some conspicuous place, within the village or town, in which the attachment may take place ; as well as in the cutcherry of the local *Moonsiffs* ; and at the cutcherries of the Collector of the district ; and the *Zillah Judge*, or Register, who may have ordered the sale. When the sale is to be made by a *Sudder Ameen* the notification shall also be affixed in the cutcherry of such *Sudder Ameen*.—*Reg. 7, 1825, Sect. 3, Cl. 2*

Form of proclamation to be used when property is attached & advertised in execution of decrees by the *Zillah* and subordinate courts

81. The Court of *Sudder dewanny adawlut* in the lower provinces request that the annexed form of proclamation may be generally adopted, on all occasions of property, real or personal, being attached and advertised for sale in execution of decrees by the *Zillah* and all the subordinate courts.—*Cr. Ord. 21st Aug. 1843, par. 1.*

Lithographed forms of the proclamation to be indented for

82 The several Judges will use their discretion in indenting on the Superintendent of the Lithographic Press at Calcutta, for a sufficient supply of lithographed forms of the prescribed proclamation, according to the requirements of their respective courts.—*Ibid, par. 2.*

নীলামের ইশ্তাহার ।

জারীর মহকুমা

জিলা

বাবত ডিক্রীজারীর মহকুমা ।

নাম :

জি

নীলাম এরিষন হকীমৎ ও তৎসংক্রান্ত ।

নাচের লিখিত মতালক জায়দাদ যাহা ডিক্রীর টাকা উমূলনিমিত্তক লিখিত তারিখ সন ১৮

সকলে অবগত হইত যে

নীচের লিখিত জায়দাদের তালিকাৰ ফর্দ আপন ডিক্রীর টাকা উমূলের নিমিত্তে উপরোক্ত বিষয় সাহা নীলাম হওনের জন্য সন ১৮ ইঙ্গরেজীতে দাখিল করে এবং ঐ দরখাস্ত অনুশারে সকলের জাতিার্থে ইশ্তাহার এই মজমুনে জারী হইতেছে যে তারিখ যাতা সন ১৮ ইঙ্গরেজী জিলা পরগনার মোকামে নীচের লিখিত জায়দাদে জি

যে কিছু হক থাকে প্রাতে দশ ঘটীর সময় নীলাম শুরু হইবেক যাহাকে উক্ত হকীমৎ খবদ কবা প্রয়োজন হয় মোকাম মজকুরে উক্ত সময়ে স্বয়ং কিম্বা মোকাদ্দার দ্বারা হাজির হইয়া খবদ করে ।

## নীলামের শর্তাবলি।

১ দফা। উক্ত জাবদানসংক্রান্ত মুদ্রালেহের বাহা হক আছে তদ্ব্যতিরেকে অন্য কাহার হকীয় ও তৎসংক্রান্ত বিষয় নীলাম হইবেক না।

২ দফা। যখন নীলাম সাজ হইবেক তখন নীলাম খরিদারকে নীলামী টাকার উপর শতকরা ১০৭ টাকা হিসাবে বাঘনার টাকা নীলাম হইবামাত্র আর বাকী টাকা স্বাবর বস্তুর ১৫ দিবস মিয়াদে এবং অস্থাবর বস্তুর ২৪ ঘণ্টার মধ্যে দাখিল করিতে হইবেক তবে নীলামের খরিদার নীলামী বস্তুর উপর দখল পাইবেক।

৩ দফা। যদিপি নীলাম খরিদার বাঘনার টাকা দাখিল করিয়া স্বাবর বস্তুর নীলাম হইবার সময় হইতে ১৫ দিবসের মধ্যে আর অস্থাবর বস্তুর ২৪ ঘণ্টার মধ্যে পণের বাকী টাকা দাখিল না করে তবে জাবদান মজকুর পুনর্বাচ নীলাম হইবেক আর যে কিছু নোকসান পুনর্বাচ নীলামে হইবেক প্রথম খরিদার হইতে আদায় হইয়া পণবাহা ও বাঘনার টাকা সমেত মুদ্রালেহের নামে সেবা হইবেক এবং ডিক্রীদারকে ডিক্রীর আন্দাজ টাকা দেওবান হইবেক।

৪ দফা। যদিপি নীলাম খরিদার নীলাম পূর্ণ হইবামাত্র বাঘনার টাকা দাখিল না করে তবে জাবদান মজকুর তৎক্ষণাৎ নীলাম হইবেক আর নীলামী টাকা ছানি নীলাম খরিদার হইতে এবং যে আন্দাজ টাকা নীলাম ছানিতে নোকসান হইবেক প্রথম খরিদার হইতে উমুল আর মুদ্রালেহের নামে সেবা হইয়া ডিক্রীদারকে ডিক্রীর আন্দাজ টাকা দেওবান হইবেক।

৫ দফা। এবং এই দুইপ্রকারেই যে কিছু লাভ দ্বিতীয় নীলামে হইবেক মুদ্রালেহের নামে সেবা হইয়া ডিক্রীদারকে ডিক্রীর আন্দাজ টাকা দেওবান হইবেক ইতি।

অপ্রকাশ না থাকে যে অদ্যাবধি  
জাবদান মজকুরের বিষয়ে ও জবদরি

তরফহইতে  
ইতি তারিখ

মাহা

সন ১৮

দাখিল  
ইং

জাবদানের তফস্বীল।

83. It appearing, from several recent instances which have come before the court, that many of the local civil tribunals, in sales held by them in execution of decrees or other judicial process under Regulation 7, 1825, entirely neglect observance of the provisions of Clause 2, Section 3 of that enactment, in respect to the proclamation of sale enjoined therein, both as regards *what particulars* such proclamation is to contain, and *how* it is to be made and *notified*; the Court beg the particular attention of judicial officers to the rules referred to, and desire that proper notice be invariably taken by the Judges of all deviations therefrom on the part of the inferior courts.—*Civ. Ord. 15th March 1842*

The courts are strictly enjoined to observe all the rules laid down in reg. 7, 1825, sec. 3, cl. 2, respecting the proclamation to be issued.

84. Held that the failure to publish notice of sale, on the property advertised, the sale having been made by the Collector in execution of a decree of court, vitiates the sale.—*S. D. 1 Sel. Rep. 5th Oct 1841, vol. 7, p. 48.*

The failure to publish notice of the sale on the property advertised vitiates the sale.

85. Failure to deposit the peon's fees for serving notice of sale in execution of a decree held not to affect the legality of the sale —*Rep. Sum Cases, 17th Jan. 1843, p. 46.*

Failure to deposit peon's fees for serving notice, does not affect the sale.

86. The usual processes for attachment and sale, in such cases, may either be issued successively, or simultaneously, as the Judge, Register, or other judicial officer, directing the sale, may in each instance think proper, with reference to the circumstances of the case.—*Reg. 7, 1825. Sect. 3, Cl. 3.*

The usual processes for attachment, and sale, may be issued simultaneously.

The private purchase of property, after its advertisement for sale, but without the issue of proclamation of attachment cannot be summarily set aside.

Period within which a purchaser of property sold by ameen, in execution of decrees, must pay the amount

A deposit of 10 per cent required, or the property must be resold

The full amount must be made good in 15 days

The entire sum bid for moveable property must be paid up in 24 hours

Disposal of the deposit, if the sale does not become final.

No one can be compelled to take charge of property attached or distrained; but any one who does so voluntarily, is responsible for it.

Who is generally answerable for the property distrained or attached during distraint or attachment.

Cases in which the decree-holder is permitted to give his receipt for the amount of his claim in payment of so much of the purchase money; rules to be observed in such cases.

87. Held, that the private purchase of property, after its advertisement for sale in satisfaction of a decree, but without issue of proclamation of attachment under Regulation 2, 1806, cannot be summarily set aside.—*Rep. Sum. Cases, 3d Sept. 1846, p. 84.*

88. The law making no provision for any specific period within which a purchaser of property sold by *Ameens* in cases of execution of decree, shall pay in his purchase money, the Courts of *Sudder dewanny adawlut*, for the Lower and North-Western Provinces are pleased to determine that the "isltihar" or notice of sale in such cases, shall contain the following particulars—*Co. Ord. 12th Aug. 1842, par. 1.*

89. A deposit of ten per cent. on the amount proceeds shall be required to be made at the time of sale by the purchaser, on whose failure to comply with this requirement the property shall be forthwith put up again and sold.—*Ibid, par. 2.*

90. The full amount of the purchase money in sales of *real property* shall be made good by the purchaser within fifteen days from the day of sale, in default of which the deposit will be forfeited, and the property be resold at the risk of the first purchaser, who shall forfeit all advantages, and make good all losses—*Ibid, par. 3.*

91. The entire sum bid for *moveable property* shall be paid up within twenty-four hours from the time of sale and before delivery of the property, subject to the penalty provided in the preceding rule.—*Ibid, par. 4.*

92. In the event of a sale not becoming final, the amount of deposit forfeited shall be carried to the credit of the owner of the property, for the benefit of the decree-holder, after deducting therefrom the commission of the ameen on the sale—*Ibid, par. 5.*

*Vide also Circular order, 21st August, 1843, No. 81 of this Chapter.*

93. I am directed to inform you that no person can be compelled against his will to take charge of property distrained or attached in the manner described in your communication [that is, in execution of a decree,] if however any one should take charge of the property voluntarily, he will of course become responsible for the faithful discharge of his engagement and liable to prosecution before the Civil court by a regular suit for damages, which may have arisen from his failing to do so; no summary proceedings however can be instituted against him.—*Con. 955, West. C. 19th June, Cal. C. 17th July 1835, par. 2.*

94. Generally the person at whose instance the property is distrained or attached must be considered answerable for the safe custody of the property during the period of distraint or attachment—*Ibid, par. 3.*

95. Doubts appearing to be entertained as to whether the Civil courts are competent to allow a decree-holder, purchasing property sold at public auction in satisfaction of his decree, to file his receipt to the extent of the sum awarded him, in lieu of paying the whole amount of purchase money into court, I am directed by the Court to acquaint you that it has been ruled that a decree-holder should be permitted, under the circumstances above stated, to give his receipt for the amount of his claim in payment of so much of the purchase money of the property sold, provided the arrangement do not interfere with the equal claims of other parties, and that, as respects the delivery of possession of the property, the same rules are observed in regard to him as would be applied to any other purchaser, and provided also that, where the property

sold may be land paying revenue to Government, the demands of Government on the estate are previously settled.—*Cir. Ord. Cal. and West. C. 18th Jan. 1839.*

96. With reference to the printed Circular order, No. 30, dated the 18th January, 1839, it was held, on a reference from the Judge of Midnapore, that a decree-holder purchasing his debtor's property at a public sale by the Collector, for a higher sum than the amount of his decree, must deposit fifteen per cent. on the whole amount of the purchase money, or the balance in full; as should the balance above the amount of his decree not be paid, the sale falls to the ground, and the purchaser forfeits the earnest money on the sum total bid by him.—*Con. 1350, Cal. C. 15th July, West. C. 5th Aug 1842.*

Case in which the decree-holder purchases his debtor's property at a public sale for more than the amount of his decree.

97. The offer of a decree-holder to take property, sold in the execution of his decree, for more money than was paid by the first purchaser, rejected by the Sudder dewanny adawlut, the sale being otherwise unexceptionable.—*Rep. Sum. Cases, 10th Dec. 1838, p. 16.*

The offer of a decree-holder to take property sold in execution of his decree for more than was paid by the first purchaser, rejected.

98. The vakeel of a judgment creditor having applied on behalf of his client, praying that certain property belonging to his debtor might be publicly sold to him at a specified sum, if more was not bid for it: it was held by the Sudder dewanny adawlut, that the client was bound by such an application, notwithstanding his subsequent declaration that he had not authorized his vakeel to make it.—*Rep. Sum. Cases, 22d March 1842, p. 26.*

Where the vakeel of a judgment creditor made an application on behalf of his client to purchase the property sold in execution of his decree, the client was bound by the offer.

99. A question having arisen as to whether, in executing a decree, if no purchaser be forthcoming, for a house as it stands, and individuals should signify their willingness to purchase the materials, it is legal to detach or cause them to be detached from the building for the purpose of bringing them to separate sale, I am directed to request you will obtain the opinion of the Calcutta Court on the point.—*Con. 1227, Cal. and West. C. 2d Aug. 1839, par. 1.*

Though there should be no purchasers, it is not lawful to detach and sell the materials.

100. The opinion of this Court is, that such a proceeding is not warranted by law, which seems to require that the property should suffer no detriment in any way prior to sale, the auction purchaser being of course at liberty, on his own responsibility, after the purchase may have been concluded, to remove any part of the same, being at the same time answerable to any other claimants who may contest the extent of right acquired by him at sale.—*Ibid, par. 2.*

Idem.

101. The Court observe no that hardship could result from the observance of the above rule, as under the construction recently adopted by both Courts (enulated by this Court under date 18th January last) the decree-holder would always have the option of himself becoming the purchaser by filing his receipt for the amount of his claim.—*Ibid, par. 3.*

Idem

102. The same principle, the Court remark, would apply to the case of trees in a similar predicament, which ought not to be cut down till after they shall have been sold.—*Ibid, par. 4.*

Nor ought trees to be cut down till after they are sold.

103. An appeal having been presented to the Court from an order passed by the Judge of zillah Mirzapore, in regard to the attachment and sale of a house situated within the limits of his jurisdiction, in execution of a decree passed by a Court of civil judicature in the Saugor and Nerbudda territories to which the civil regulations of the British Government have not been extended, a question has arisen whether it was competent to the Judge to exercise any interference in the matter, and I am directed, therefore, to request that you will submit the point for the consideration of the Calcutta Court.—*Con. 1133, Cal. and West. C. 16th Feb. 1838, par. 1.*

Course to be pursued by a holder of a decree of a foreign court, or an extra regulation province who wishes to execute it against property in one of the regulation districts.

He must institute a suit in the court of that district, on the decree passed in his favor in the other court.

104. The Court observe that on a reference being made to the Advocate General under date the 27th June, 1809, to ascertain whether any and what measures could be adopted in the case therein mentioned, to recover from the defendant, who had proceeded to England, the amount of a decree given against him by the Court of Sudder dewanny adawlut at Calcutta, the following opinion was obtained from that officer: "A foreign judgment is, generally speaking, considered as a *prima facie* ground of action in our courts, and the judgments of courts in the colonies and dependencies are to this purpose upon the same footing in the Courts in England with foreign judgments. If however a foreign judgment should appear on the face of it to be erroneous, it will not support an action, as we only profess to give effect to those judgments, where they are conformable to justice, and the general principles of law, which is presumed till the contrary appears. The proper course for the appellants under the general rule would be to transmit an exemplification of the judgment of the Sudder dewanny adawlut, and of the whole proceedings in the cause under the seal of the court, and the signatures of the Judges, with proper powers of attorney, to some person in England to institute a suit on the judgment of the Sudder dewanny adawlut against the respondent—*Con. 1133, Cal. and West. C. 16th Feb. 1838, par. 2.*

Idem

105. It appears to the Court that the same principle is equally applicable to the case which has given rise to the present reference, and they propose, to act upon it accordingly in disposing of the appeal now before them, by setting aside, as illegal, the whole of the proceedings held by the Judge of Mirzapore, and intimating to the decree-holder that he is at liberty to institute a suit in that court against the opposite party, founded on the judgment passed in his favor by the Civil court in the Saugor and Nerbudda territories.—*Ibid, par. 3.*

Idem

106. Mode of proceeding in regard to the decree of a foreign court, when the decree-holder desires to take out execution against property within the jurisdiction of one of the Company's courts.—*Rep. Sum. Cases, 6th Dec. 1842, p. 11.*

## SECTION V

### *Sale of Land in execution of Decrees by the Civil Courts.*

Repeal of former regulations

107. It is hereby enacted, that so much of Sections 10 and 11, Regulation 1, 1793; Section 7, Regulation 27, 1795; Sections 37 and 38, Regulation 25, 1803, and Sections 27 and 28, Regulation 9, 1805, as relates to the adjustment of the Government jumma on lands exposed to public sale in satisfaction of the decrees of the Courts of civil judicature; Regulations 45, 1793; 20, 1795, and 12, 1796. Sections 15 to 26, (both inclusive) Regulation 26, 1803; so much of Sections 27 and 28 of the same Regulation as relates to the satisfaction of decrees; and clauses second and third, Section 4, Regulation 7, 1825, all of the Bengal code, be repealed.—*Act IV. 1846, Sect. 1.*

Idem.

108. And it is hereby enacted, that all Regulations or parts of Regulations which extend any of the Regulations or parts of Regulations hercinbefore repealed, be also repealed.—*Ibid, Sect. 2.*

How attachments and sales of land in the lower provinces

109. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, except the North-West Provinces, attachments and sales of land,

or of any interest in land in satisfaction of the decrees or other process of the Courts of civil judicature, shall be made by such courts or under their directions, and that the rules now in force for the attachment and sale of such real property as the Courts of civil judicature are now authorized to sell in satisfaction of decrees, without application to the revenue authorities, shall apply to attachments and sales made under the authority of this Act.—*Act IV. 1846, Sect. 3.*

110. And it is hereby enacted, in addition to the said rules, that in the said territories, except as aforesaid, whenever a holder of a decree of any Court of civil judicature shall apply to such court for the sale in execution of any estate paying revenue to Government, or any portion of any such estate, he shall, at the time of making such application, file an authenticated extract from the register of the Collector's office, specifying the jumma of such estate, which shall be inserted in the notification of sale.—*Ibid, Sect. 4.*

In those provinces the decree-holder, when applying to the court to execute the decree, will file a register of the collector's office specifying the jumma

111. And it is hereby enacted, in addition to the said rules, that in the said territories, except as aforesaid, the purchaser at any such sale shall be required to deposit immediately either in cash, Bank of Bengal notes, or post bills, or Government securities duly endorsed, fifteen per cent. on the amount of his bid, and in default of such deposit such land or interest therein shall forthwith be put up again and sold, and if the purchaser having paid the deposit required shall neglect or refuse to pay the purchase money, within the period which may be stipulated, the deposit shall be forfeited and shall be applied as if it were purchase money, and the land or interest therein, or such portion thereof as may be sufficient to satisfy what remains due, shall be again put up to sale, due notification having been first given.—*Ibid, Sect. 5.*

Deposit to be made immediately of 15 per cent., penalty for default

Penalty for not paying the purchase money within the stipulated period.

112. If the purchaser refuse to pay the purchase money and take possession, and the property on a resale be sold for a smaller sum, the difference must be realized from the purchaser by the process prescribed for enforcing a decree of court.—*Con 554, 28th May 1830.*

How the difference is to be realized from the purchaser, if the property is resold at a loss.

113. The failure of the first purchaser at a sale in execution of a decree, to make good the purchase money, does not relieve the original debtor from his liabilities.—*Rep. Sum Cases, 2d March 1846, p 76.*

The failure of the first purchaser to make good the money does not release the original debtor

114. And it is hereby enacted, that in the North-West Provinces of the territories subject to the Presidency of Fort William in Bengal, attachments and sales of land or of any interest in land in satisfaction of the decrees or other process of the Courts of civil judicature, shall (except in the case of land which the courts themselves are now by law authorized to attach and sell) be made by the Collector or any of his subordinate officers under his directions, upon the requisition of such courts.—*Act IV. 1846, Sect. 6.*

In the N W provinces the attachments & sales of land in satisfaction of decrees shall be made with exceptions by the collector.

115. And it is hereby enacted, that in the last mentioned provinces, every such requisition shall specify the number of the suit, the court which made the decree, the amount to be realized, the names of the parties, distinguishing those whose land or interest it is intended to sell, and the amount for which each is liable, if they are severally liable, and the land or interest which each is alleged in the schedule of the party applying for execution, to be possessed of.—*Ibid, Sect. 7.*

In the N W provinces, the requisition shall state certain particulars—Enumeration of them.

In those provinces the collector will issue a proclamation: what the proclamation will contain Where it is to be fixed up

116. And it is hereby enacted, that in the last mentioned provinces the Collector shall issue a proclamation in the current language of the country of any intended sale of land or any interest therein, thirty days at least before the day appointed for the sale, exclusive of the day of sale, and of the day on which the proclamation is issued, and the said proclamation shall specify the name of the person whose land or whose rights and interests in certain land are to be sold, and the jumma of the estate constituting the property, or in which the property is situate, also particulars of the property to be sold, of the time and place of sale, and of the amount due for the recovery of which the sale is ordered, and such proclamation shall be fixed up in some conspicuous place within the village or town in which the said land is situate, or which is nearest to the said land, and in the cutcherries of the local Moonsiff, of the Collector, of the zillah or city Judge, and of the court from which the requisition issued.—*Act II* 1816, *Section* 8.

Where the notice of sale must be stuck up, in a sale of lands in execution of a decree

117. In a sale of lands made in execution of a decree, the notice of sale must be promulgated or stuck up in the principal town or village appertaining to the property to be sold.—*S. D. A. Sel. Rep.* 3d Oct 1841, vol. 7, p. 181.

In sales made by the collector, proclamation by beat of drum not necessary

118. In sales of revenue lands made by Collectors in execution of decrees of court, proclamation by beat of drum is not required.—*Rep. Sum. Cases*, 11th Aug 1839, p. 23.

The failure to publish notice of the sale on the property vitiates the sale

119. Held, that the failure to publish notice of sale, on the property advertised, the sale having been made by the Collector in execution of a decree of court, vitiates the sale.—*S. D. A. Sel. Rep.* 5th Oct. 1841, vol. 7, p. 18.

After the civil court has confirmed a collector's sale in execution of a decree, the commissioner of revenue cannot annul it

120. An order by the Commissioner of Revenue for the annulment of a sale made by the Collector in execution of a decree of court, after it had been confirmed by the Civil court, held by the Sudder dewanny adawlut to be a nullity, and the Zillah court directed to apply to the Collector for the proceeds of sale.—*Rep. Sum. Cases*, 25th Feb. 1813, p. 16.

When an order to stay the sale sent by the civil court, reached the collector after the sale, it could not be set aside

121. An order to stay the sale of property, about to be sold by the Collector in execution of a decree, was transmitted by the Civil court, but not received by the Collector prior to its sale.—Held that the sale could not be set aside.—*Rep. Sum. Cases*, 17th March 1847.

In the N. W. provinces, the provisions of sec. 5 of this act, will apply to sales of land, or any interest in land

122. And it is hereby enacted, that in the last mentioned provinces the provisions contained in Section 5 of this Act, shall be applicable to sales of land or any interest in land in execution of decrees of court or other judicial process.—*Act II* 1816, *Section* 9.

Throughout the presidency of Fort William, the sales of land in execution of decrees will be of the nature of private transfers

123. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, sales of land or of any interest in land in execution of decrees of court or other judicial process, shall be of the nature of private transfers.—*Ibid*, *Section* 10.

An order of the zillah judge that a sale of land in execution of a decree did, in a certain case, cancel all leases granted by the former proprietor, overruled.

124. The order of a zillah Judge, declaring that a sale in execution of a decree, which adjudged repayment of a loan previously advanced to protect the same property from public sale for arrears of revenue, had the same effect as such public sale, and cancelled all leases granted by the late proprietor, overruled.—*Rep. Sum. Cases*, 30th June 1841, p. 13.

In the presidency of Fort William, the courts of S. D. A.

125. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, the Courts of Sudder dewanny adawlut shall, from time to time,

frame such rules as to them shall seem meet, and as shall not be repugnant to any thing in this Act contained, for the attachment and sale of property in satisfaction of decrees or other process of the Courts of civil judicature, which rules shall after they have been approved by the Governor General of India in Council, have the same force as if they had been part of this Act, until revoked by the said Courts of Sudder dewanny adawlut with the approbation of the said Governor General of India in Council or by the said Governor General of India in Council.—*Act IV. 1846, Sect. 11.*

shall from time to time make rules for the attachment and sale of lands in execution of decrees.

They must be approved by the G. G. in C and will then have the same force as this act.

126. And it is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, all applications which may have been made by the Courts of civil judicature to the revenue authorities for the sale of land, or of any interest in land in satisfaction of decrees or other process of such courts, previously to the passing of this Act, shall be proceeded upon as if this Act had not been passed.—*Ibid, Sect. 12.*

In the presidency of Fort William, all applications for the sale of land made previously to this act shall be acted on as though this act had not been passed

127. And it is hereby enacted, that nothing contained in this Act shall affect the process of Her Majesty's Supreme Court of judicature, or of the Court of Requests at Calcutta, or of any court in the settlements in the Straits of Malacca.—*Ibid, Sect. 13.*

What courts are not affected by this act.

128. Act IV. 1846, Section 3, provide that the rules now in force for the attachment and sale of such real property as the Courts of civil judicature are now authorised to sell in satisfaction of decrees without application to the revenue authorities, shall apply to attachments and sales made under the authority of this Act." Those rules are to be found in Regulation 7, 1825. They are to be strictly attended to, and especial care taken that the preliminary process therein prescribed, for bringing any property to sale, be duly observed. The following rules, therefore, drawn up under the authority conveyed in Section 11 of the Act IV. 1846, relate only to such points of detail in the conducting of sales as neither the Act itself, nor Regulation 7, 1825, provides for.—*Calcutta 17th July 1846.*

The following rules are laid down by the S. D. A. under the authority conveyed in Sec. 11, act 4, 1846, as above.

129. Every sale of landed property to be made under the authority conveyed in Section Act IV. 1846, shall The preliminary process, and the sale of landed property, will be made by the officer authorised to execute the decree  
The preliminary process, and the sale of landed property, will be made by the officer authorised to execute the decree  
 ute the decree in satisfaction of which the sale is proposed to be made, or under his directions, and the preliminary processes shall all be issued by the said officer.—*Ibid, Rule 1.*

130. Sales shall ordinarily be advertized to take place at the cutcherry of the officer under whose order the same may be directed, but when a sale is about to be made under the orders of a Moonsiff in the interior, and he may think it expedient that the sale should take place at the sudder station of the district he shall issue the prescribed processes to that effect, and communicate the same by roobukaree to the Judge, transmitting therewith copy of the lot-lundee, exhibiting all the particulars of the intended sale. In such cases, the Judge will either instruct his nazir to preside at the sale, or do so himself. In either case the result shall be communicated to the Moonsiff.—*Ibid, Rule 2.*

Where the sale is ordinarily to take place

Course to be adopted if a moonsiff thinks it expedient for the sale to take place at the sudder station

131. If the property proposed to be sold in execution of a decree by a Moonsiff, should not be situated within such Moonsiff's jurisdiction, but should be situated within the jurisdiction of another Moonsiff in the same district, then the Moonsiff passing the decree shall transmit the sale papers to the Moonsiff within whose jurisdiction the property may be situated, with a roobukaree, requesting him to realize the amount due on the decree. The latter shall

Course to be adopted when the property to be sold in execution of a moonsiff's decree, lies in the jurisdiction of another moonsiff.



then proceed to effect a sale of the property in the same manner as if the decree had been passed by himself. The result shall be communicated to the Moonsiff ordering the sale to be made.—*Cir. Ord. 17th July 1846, Rule 3.*

Form of lotbunden in cases of intended sales

132. A form of the lotbunde to be used in all cases of intended sales, is annexed, marked A.—*Ibid, Rule 4.*

When the sales are to take place

Period to be allowed

Particulars relative to the appointment of the day.

133. The first Monday in every English month shall be the day fixed for sales under Act IV. 1846, to take place; care being taken, in issuing the proclamation (form of which marked B. is annexed,) required to be made of intended sales, to allow in every instance the full period of thirty days, exclusive of the date of such proclamation and of the day of sale; so that when notice of an intended sale is to be issued, should the first Monday in the ensuing month fall within thirty days, the sale must be fixed for the first Monday in the following month. In any instance should the first Monday in the month be an authorized holiday, the sales shall commence on the first court day ensuing.—*Ibid, Rule 5.*

Case in which the sale will be continued from day to day.

134. Should the sales advertised to take place on a particular date prove in any instance more than may conveniently be concluded on the day fixed, the circumstance shall be recorded by the presiding officer; and in such cases the sales shall be continued from day to day till the whole shall have been disposed of.—*Ibid, Rule 6.*

Course to be pursued when the presiding officer is unable from any unavoidable cause to proceed with the sale of the day

135. The same course shall be adopted when the presiding officer may be unable, through indisposition or other unavoidable cause, to proceed with the sales on the day fixed. In such cases the officer under whose orders the sales may have been directed to be made, may either direct some of his subordinate officers to conduct the sales, or he may adjourn them from day to day till he himself shall be able to preside.—*Ibid, Rule 7.*

\* If it be necessary to postpone the sale to a subsequent day, due notice of it is to be given

136. Should more than a mere adjournment from day to day be requisite, and it be found necessary to postpone a sale to a subsequent date, due notice, viz at the court where the sale is to be made, and at the Judge's office, shall be given of the day fixed for the postponed sale to take place.—*Ibid, Rule 8.*

If it be necessary to postpone the sale, through the discovery of an error in the lotbunde or advertisement, it must begin again *ab initio*.

137. Should it be found necessary to postpone a sale through any error discovered in the lotbunde or advertisement, whether as regards the description given of the property proposed to be sold; or, if the property consist of land paying rent, of the jumma assessed thereon, in such case, the errors being corrected, process of sale must issue again *ab initio*.—*Ibid, Rule 9.*

All may bid When the bidding has ceased the deposit must be made, and 15 days allowed for paying the balance, when paid, the court will grant a receipt.

138. All persons shall be permitted to bid for the property exposed to sale without previous question. When the bidding\* has ceased, for which due time shall be allowed, the officer presiding shall call on the highest bidder to pay down the deposit required under Section 5 of the sale Act. On complying with this requisition the purchaser shall be allowed 15† days from the day of sale reckoning that day as one of them, to make good the balance‡ of the purchase money. On payment of the same within the prescribed time, the presiding officer shall grant

\* Should disputes arise as to who may be the highest bidder, before the lot has been distinctly knocked down the previous bids shall go for nothing, and the sale shall be commenced again *de novo*

† Should this balance not be paid within the prescribed period, the notification of resale required by Section 5 of the Act, shall be an advertisement at the catcherry of the officer holding the sale, announcing the property for resale on the first regular sale day in the ensuing month

‡ If the fifteenth day should be a Sunday, or a close holiday, then the purchaser shall be deemed to have paid the purchase money within the prescribed time if he pay it by sunset of the first court day thereafter ensuing.

the purchaser a receipt for the sum total, and forthwith remit the amount to the treasury of the Judge of the district to which he is himself subordinate.—*Cir. Ord. 17th July 1846, Rule 10.*

139. The orders of the zillah Judge who refused to admit, without deposit, the bid of a decree-holder for property under sale in execution of his own decree, reversed by the Sudder dewanny adawlut.—*Rep. Sum. Cases, 6th March 1839, p. 13.* The court cannot refuse to receive a bid without a deposit.

140. A bid for property about to be sold by the Collector, in execution of a decree, made to the Civil court, and information thereof given to the Collector, held to be insufficient to set aside the actual sale of the property by the Collector for a lesser amount.\*—*Rep. Sum. Cases, 30th Oct. 1843, p. 53.* A bid for the property made to the civil court, will not annul the sale for a small amount

141. Should any objections be made against the sale, within the period allowed for such representation, viz. within one month from the day of sale, the officer by whom the sale may have been ordered, shall dispose of the same with all convenient despatch. If however, no objections should be preferred within the prescribed period; or, if those preferred as above should be overruled, the officer by whom the sale may have been ordered shall declare the sale to be concluded, and immediately grant a bill of sale to the purchaser agreeably to the form C. annexed hereto.—*Cir. Ord. 17th July 1846, Rule 11.* Objections to the sale must be disposed of speedily, if none be made, or they be overruled, the court will grant a bill of sale.

142. Before disposing of the purchase money, due attention must be given to the Circular orders No. 1 of the 6th June, 1828,† No. 16, 2d January, 1836, and No. 42, 26th January, 1844. When the period for disposing of it shall have arrived, the expence incurred by the party in bringing the property to sale shall first be deducted from the proceeds of sale and paid to him or her. The residue, after the further deductions authorised to be made from the proceeds of sale in the subsequent rules, shall then be disposed of according to the rules in force applicable to such cases.—*Ibid, Rule 12.* Disposal of the purchase money.

143. When sales may be conducted by persons other than those who may have ordered the same, as for instance under rules 2 and 3, the duty of the officer conducting the sale, shall be purely ministerial, and he shall not take cognizance of any objections which may be urged against the intended sale, nor shall he postpone the sale except at the especial requisition of the officer who may have directed the sale to be made.—*Ibid, Rule 13.* Nature of the duty of the officer conducting the sale, when it is conducted by persons other than those who have ordered it.

144. The foregoing rule is not intended to apply to cases in which the property proposed to be sold may be situated in a district other than that to which the court passing the decree, in execution of which the property is proposed to be sold, appertains. In all such cases the rules prescribed by Circular orders Nos. 83 and 167, dated 8th May, 1840, and 24th September, 1841, will remain in force, but there seems no good reason for extending those rules to cases in which one Moonsiff may be employed to sell under the requisition of another Moonsiff, both being subordinate to the same Judge, and consequently under the same appellate jurisdiction.—*Ibid, Rule 14.* But this rule does not apply when the property to be sold is situated in a district, other than that of the court ordering the sale.

145. No sale shall commence before noon, nor after sun-set.—*Ibid, Rule 15.*

No sale to commence before noon, or after sunset.

\* The decision of the Sudder Court in this case is as follows:—"The case must be decided with reference entirely to the rules of sale, and as they contemplated bidding only at the time of sale, and the property had been sold to the highest bidder then bidding, the sale could not be set aside on the ground of any bid made to the Civil court."

† Modified by Circular order No. 26, dated 11th August, 1843

When sales are made by the munsif, judges, a report will be submitted to the judge of the district, and another, at the end of 15 days.

146. When sales are made by or under the directions of a Principal Sudder Ameen, Sudder Ameen or Moonsiff, the result of the proceedings shall be submitted to the Judge of the district at the close of the day, in the form annexed marked D: at the close of the fifteenth day, a report shall be transmitted to the Judge simply announcing whether the amount purchase money has been paid in full or not. The Judges will be careful to see, that these reports are regularly submitted and within the time prescribed. —*Cir. Ord. 17th July 1846, Rule 16.*

Two registers to be kept, the one of property to be sold, the other of property sold

147. Two registers shall be kept by every court, according to the forms hereto annexed, marked E and F, the one of property to be sold, the other of property sold. In the latter register, sales made, but not completed by payment in full of the purchase money, are not to be entered; but payment in full having been made, they are to be entered immediately, without reference to their subsequent confirmation or otherwise.—*Ibid, Rule 17.*

Made in which these registers are to be kept, authenticated and inspected

148. The registers prescribed in the preceding rule shall be kept in two strongly bound volumes, the pages in each being numbered; and at the close of the volumes the Judge shall certify under his own signature the number of pages contained in each volume. Every entry in these registers shall be authenticated by the presiding officer for the time being of the court to which they appertain, and the Judges will avail themselves of every favourable opportunity of inspecting these registers, and seeing that they are carefully and properly kept up.—*Ibid, Rule 18.*

Bill of sale to be granted to the purchaser, its effect in every court

149. The bill of sale to be granted to a purchaser under rule 11, shall be drawn out on stamped paper according to the amount paid for the property, and the cost price of the stamp shall be paid by the purchaser according to rule in note to exemptions, No. 19, Schedule A, Regulation 10, 1829, and the said bill of sale shall be deemed in any Court of justice sufficient evidence of the title acquired thereby being vested in the person or persons named therein from the date specified.—*Ibid, Rule 19.*

Proclamation to be affixed in various courts that the purchaser has succeeded to the rights of the proprietor

150. Simultaneously with the grant of this bill of sale to the purchaser, the officer under whose orders the sale may have been made, shall affix a proclamation in the language of the district in his cutcherry, intimating in the terms of the bill of sale, the succession of the purchaser to the rights and interests of the party whose property has been sold; a similar proclamation shall be sent to the cutcherries or the darogahs of Police, within whose jurisdictions any part of the property sold may be situated—and a third to the cutcherry of the zemindar in whose estate the property sold may be situated. And no other process for putting the purchaser in possession shall be necessary, and any disputes which may arise as to the extent of the property sold, or of the rights and interests therein heretofore belonging to the party to whom the purchaser has succeeded, shall be heard and determined as a regular suit under Regulation 4, 1793, and not otherwise, it being clearly understood that sales under Act IV. 1846, convey to the purchaser no right or privilege which was not vested in the person of the late proprietor. Such rights or privileges, therefore, becoming the subject of dispute, can be determined only by the institution of a regular suit.—*Ibid, Rule 20.*

No other process for putting him in possession necessary

How disputes regarding the property are to be settled

#### FORM A

Form A referred to above.

*Register of property advertised for sale in execution of decrees of Court under Act IV of 1846, this 26th February, 1851, corresponding with the 14th Falgun, 1268, B E*

Agreeably to the orders contained in the proceeding of the Judge, Principal Sudder Ameen, &c. of this district, dated 3d February, 1851, and to the notice issued under this date, in the case of Gungagobind

Chuckerbutty, plaintiff, *versus* Manoolla Sheik, defendant, No. 357, the undermentioned property will be sold by public auction for the realization of the amount due in that case, on Wednesday, the 27th March, 1851, corresponding with the 15th Chytr, 1268, B E

1	2	3	4	5	6	7	8	9	10	11
No. of the lot	Name of mahal	Name of pargannah	Name of district	Proprietor's name recorded on the Collector's office	Sudder judge of the mahal	Name of Zaminदार	Zaminदार's receivable judgment	Name of debtor	Amount to be realized	Remarks
										In this column (11) it should be recorded distinctly that the rights and interests only of the person or persons answerable for the amount to be recovered are to be sold. Also any information regarding the mode in which the amount of defendant talook, &c. may have been ascertained.

Form B

Form B

*Notes of Judge, Principal Sudder Ameen, &c. in Zillah 24-Pargannahs, under Act IV of 1840.*

Agreeably to the orders contained in the proceeding of the Judge, Principal Sudder Ameen, &c. of this district, bearing date 3d February, 1851, in the case of Gangagoband Chuckerbutty, plaintiff, *versus* Manoolla Sheik, defendant, No. 357, the undermentioned property will be sold by public auction at the \_\_\_\_\_ cutcherry of \_\_\_\_\_, at noon, on Wednesday, the 27th March, 1851, corresponding with the 15th Chytr, 1268, B E for the realization of the amount below specified. Dated 26th February, 1851, corresponding with the 14th Falgoon, 1268, B E

1	2	3	4	5	6	7	8	9	10	11
No. of the lot	Name of the mahal	Name of the pargannah	Name of district	If a government mahal—the name of the recorded proprietor	Sudder judge of the mahal	Revenue authorities, with whom the amount is payable to the talookdars	Name of the person or persons answerable for the amount	Amount to be realized		Remarks
										In this column (11) it should be recorded distinctly that the rights and interests only of the person or persons answerable for the amount to be recovered are to be sold. Also any information regarding the mode in which the amount of defendant talook, &c. may have been ascertained.

Form C.

FORM C.

I make it known, that agreeably to Act IV. of 1846, Ramguttu Biswas has purchased at auction the right and interests of Ruhmut, son and heir of Munoolia, in and appertaining to the kismut of mehal Radhanagore, and that his purchase has taken effect on and since the 27th of March, 1851 Dated 19th April, 1851, corresponding with the 3d of Chyete, 1268, B E.

*Official signature of the Officer holding the sale.*

Form D.

FORM D.

*Report of Sales made this day in which the deposit has been paid in, in conformity to the orders of—*

1	2	3	4	5	6
Particulars of the property sold	Decree in execution of which the property has been sold	Name of purchaser	Amount for which the property sold	Amount deposited in part payment of the purchase money	Remarks.

Form E.

FORM E.

*Register of Property advertised for sale in execution of decrees under Act IV 1846*

1	2	3	4	5	6	7	8	9	10	11
No. of lot.	Particulars of property.	Date of adjunction	Date fixed for the sale to take place.	Parties to the decree in execution of which the property is proposed to be sold	Amount payable under the decree	Charges incurred on the property to be sold	Charges when and how disposed of	Sale when made	Reference to page and row of register of sales made.	Remarks.
										<p><i>Note</i> —Under this head, explanation will be entered, in the event of no sale taking place, F G The amount due on the decree was paid in full, or the purchaser having made the required deposit failed to complete his purchase, by paying the remainder of the purchase money, within the required period, and the property has been re-advertised for sale.</p> <p><i>Note</i> Columns 9 &amp; 10, have been added to render the statement complete for general reference, they will only be filled up in the event of the property being sold and entered in register F.</p>

## FORM F.

Register of Sales made in execution of decrees under Act IV 1846.

Form F.

1	2	3	4	5	6	7	8	9	10
Particulars of property	Date of sale	Parties to the decree in execution of which the property was sold.	Name or names of purchaser.	Amount of purchase money.	Objections preferred or not after the sale was made, by whom and date thereof.	Objection when and how disposed of.	Bill of sale given to the purchaser on	Reference to the register of proposed sales.	Remarks
									<p><i>Note.</i> As explained in the rules only such sales as may be completed by the payment in full of the purchase money are to be entered in this register and in the event of such a sale being cancelled either on summary investigation of the objections preferred, or by the decision of a court of justice on the institution of a regular suit, a brief remark of the same is to be entered under the head of remarks.</p>

151. The Court desire, that whenever you may find it necessary to have recourse to a sale of land, in satisfaction of a decree, or other judicial process, and may in consequence apply to the Board of Revenue, (or Board of Commissioners,) to make the sale as prescribed by the Regulations, you will at the same time adopt the precaution of deputing a *chuprassy*, or other officer, to attach the land and hold the same in sequestration until the sale shall take place, or be countermanded.—*Crr. Ord 17th Feb. 1816, par. 4.*

When application is made to the revenue authorities to sell land in execution of a decree, the land is to be attached and sequestered.

152. The Court direct me to add, that it will not be necessary in such cases, to divest the person who may be in possession of the land, from the management of it, until the Board of Revenue (or Board of Commissioners) may take measures for that purpose, in pursuance of the authority vested in them by the Regulation abovementioned; but that an order under the seal of the Zillah (or City) court, directing the attachment, should after the usual proclamation, be affixed to some part of the property sequestered; and the officer charged with it should remain on the premises until the attachment is withdrawn after the sale has taken place, or is countermanded.—*Ibid, par. 5.*

Mode and operation of this attachment and sequestration.

153. In directing the attachment of land or other real property in execution of a decree, the Civil courts shall be competent to exercise a discretion in deputing a *chuprassy* or other officer to remain in charge of the same. In adopting or omitting this precaution, the courts will be chiefly guided by the wish of the party at whose instance the property is attached, or his *vakel*, to whom it will be their duty to explain the possible consequences of the omission. They will also take into consideration the value of the property, and any other peculiar circumstances of the case before them.—*Crr. Ord. Cal. and West. C. 5th Sept. 1834, par. 2.*

The civil courts may depute a *chuprassy* to remain in charge of the land.

154. The provision contained in the last clause of the foregoing section [viz Regulation 7, 1825, Section 3, Clause 7,] shall be considered applicable to all public sales of land made by the Collectors, or other officers of Government, in the revenue depart-

The provision contained in the foregoing clause declared applicable to all public sales of land made

by collectors or other revenue officers in execution of decrees of the courts of judicature or of other judicial process.

And not liable to be sold on account of decrees of the civil courts or otherwise, while under attachment.

The govt. will make such arrangement as may be proper, for the satisfaction of the decrees of the civil courts in such instances

No decree can be executed against a third person who was not a party thereto.

ment, in execution of decrees of the courts of judicial process; and the following additional rules are prescribed respecting such sales, in modification of those now in force. [Those rules have been repealed.]—*Reg. 7, 1825, Sect. 4, Cl. 1.*

155. Such lands or estates [viz. lands attached by order of the executive authorities in cases of offences against the State,] shall not be liable to be sold in execution of decrees of the Civil courts, or for the realization of fines or otherwise, during the period in which they may be so held under attachment.—*Reg. 3, 1818, Sect. 10, Cl. 2.*

156. In the cases mentioned in the preceding clause the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the Civil courts.—*Ibid, Cl. 3.*

157. I am directed to acknowledge the receipt of your letter of the 5th instant, and in reply to inform you that no execution of a decree will hold beyond the right of the party against whom it may have been passed; consequently, in the case put by you, B. not having been a party to the suit instituted by C. against A., cannot be ousted from his land in execution of the decree passed in favor of C.—*Con. 74, 21st Dec. 1832.*

## SECTION VI.

### *Sale of Property and Disposal of Objections to it in another Jurisdiction.*

Sale of property & disposal of objections to it in another jurisdiction.

158. With reference to the Construction 1000, by which it was ruled that the court which issues a process for the sale of property in another jurisdiction, shall dispose of the objections which may be taken to such order, I am directed to inform you that the court have been pleased to prescribe the following rule for future observance —*Ca. Ord. 8th May 1840, par. 1.*

The application will be transferred to the judge of the district in which the property is situated, the whole of the proceedings and investigations will be conducted by him.

159. Upon ascertaining that an application for the sale of property lying in another jurisdiction, should be complied with, the application shall be transferred to the Judge of the district, in which the property to be brought to sale is situated. The whole of the proceedings consequent thereon, as well as any incidental investigations, shall be conducted by that officer, in the same manner as the court issuing the process would have done, had the property been situated within the limits of its own jurisdiction.—*Ibid, par. 2.*

This rule applicable to all sales

160. This rule shall be applicable to all sales, whether made with or without the intervention of the revenue authorities.—*Ibid, par. 3.*

These rules apply to movable and immovable property.

161. Held by the Calcutta and Western Courts collectively, that the Circular order of the 8th May, 1840, applies to movable as well as immovable property.—*Rep. Sum. Cases, 13th Sept. 1842, p. 38.*

By whom claims to property advertised for sale in execution of a decree are to be investigated

162. A claim to property advertised for sale, in execution of a decree, must be investigated by the proper judicial authority of the district in which the property is situated.—*Rep. Sum. Cases, 1st Feb. 1842, p. 24.*

These rules apply equally to the subordinate as to the zillah courts.

163. The rule laid down in the Circular order No. 83, dated 8th May, 1840, relative to the proper authority for disposing of claims to property advertised for sale in execution of a decree, but situated in a jurisdiction other than that in which the decree was passed, not having been

expressly declared applicable to the subordinate, as well as the Zillah courts, it has been deemed proper by the Courts of Sudder dewanny adawlut for the lower and western provinces, with a view both to uniformity of practice and convenience, to extend it to the inferior tribunals, and such extension is hereby notified accordingly.—*Cir. Ord. 24th Sept. 1841, par. 1.*

164. The subordinate courts will be guided, as to the mode of acting upon the Circular referred to, by the principle of Construction 1235, the Principal Sudder Ameens and Sudder Ameens forwarding the application, with a proceeding under their seal and signature, to the Judge of the Zillah or City court, within whose jurisdiction the property lies, while the Moon-siffs will send it through the channel and under the signature of the Judge of their own district.—*Ibid, par. 2.*

How the subordinate courts will be guided in acting on the above circular order.

*Idem also the rules passed by the Sudder Court, in reference to Act IV. 1846, Nos. 128 to 150, pages 747 to 753.*

## SECTION VII.

### *Claims or Objections raised to the Sale of Land in execution of Decrees.*

165. In the event of any claim being preferred to the property advertised for sale, under the provisions of this section; or of any objection being offered to the proposed sale, within the period of the proclamation; such claim, or objection, shall be enquired into by the Judge, Register, or other officer, who may have ordered the sale, or may be referred for enquiry and report to a Sudder Ameen, or local Moonsiff; and if it appear necessary, the time of sale shall be postponed, till such claim or objection have been investigated: provided that the representation of it, (which, in all instances, is required to be preferred to the Judge, Register, or officer ordering the sale, as soon as practicable after the publication of the intended sale,) shall not appear to have been designedly and unnecessarily delayed, with a view to obstruct the ends of justice. In such cases, when the fraudulent design may appear evident, the sale shall not be postponed: and the claimant shall be left to prosecute his claim, after the sale, by a regular civil suit.—*Reg. 7, 1825, Sect. 3, Cl. 6.*

How judicial officers are to proceed in cases where claims are made to advertised property or objections made to the sale of it.

Provided such claim or objection shall not have been designedly delayed.

But should the claim be urged with a fraudulent design, the sale is to proceed & the claimant left to prosecute in the civil court.

166. The Court having been informed that some of the judicial officers in these provinces have been in the habit of admitting claims to property advertised for sale in execution of decree, after the period of the proclamation prescribed by Clause 2, Section 3, Regulation 7 of 1825, has expired, deem it advisable to point out that such practice is both illegal and inexpedient.—*Cir. Ord. 11th July 1847, par. 1.*

Claims to property advertised for sale in execution of decrees cannot be admitted after the proclamation prescribed in Reg. 7, 1825, sec. 3, cl. 2

167. Clause 6, Section 3, Regulation 7 of 1825 enacts, that if any claim be preferred to the property advertised for sale in execution of a decree, or any objection offered to the proposed sale, "within the period of the proclamation," it shall be enquired into, provided that the representation thereof shall not appear to have been designedly or unnecessarily delayed, with a view to obstruct the ends of justice. If the Court observe, a sale be postponed pending the investigation of a claim or objection preferred within the period limited, it is obviously proper that, on the said claim or objection being disposed of, another proclamation (the term of

Objections may be offered within the period of the proclamation

When they are disposed of, another proclamation should issue, but no objections



can be heard within the period of that second proclamation.

which should not be less than fifteen days) fixing the time and place of sale, with particulars of the property to be sold, and of the amount for the recovery of which the sale is ordered, should be issued for the information of intending purchasers, but it is not competent to the courts to receive new claims or objections to the sale, within the period of *that* proclamation, or in fact, at any time after the expiry of thirty days from the date of the first, and only proclamation, contemplated by the law. The representation of such claim or objection, after the period of the first proclamation of the intended sale has elapsed, can only be regarded as having been "designedly and unnecessarily delayed with a view to obstruct the ends of justice," and the only proper course is to proceed to the sale, leaving the claimant in the words of the law "to prosecute his claim after the sale, by a regular civil suit"—*Civ. Ord. 11th July 1847, par. 2.*

If this practice were allowed, sales would be postponed ad infinitum.

168. Where such a practice prevails, a sale may be postponed time after time, pending enquiry into pretended and unfounded claims, and the decree-holder be defeated in his endeavour to realize that which has been judicially declared to be his due.—*Ibid, par. 3.*

The successor of a Judge cannot reverse a sale on the application of the proprietor some months after it had taken place.

169. The petitioner purchased a lot sold in execution of a decree of court, and obtained a deed of sale from the zillah Judge. The successor of the Judge reversed the sale on the application of the late proprietor, presented some months after the sale had taken place. The Court held that he was not warranted in so doing, and reversed his order.—*Rep. Sum. Cases, 20th April 1841, p. 7.*

A Judge ordered a release of property, and the S. D. A. rejected an appeal because the objections had not been preferred to the Judge himself.

170. In an appeal from the order of a zillah Judge for release, on claim preferred, of property attached by the petitioner in execution of a decree, the Sudder dewanny adawlut rejected the application, the objections to the release not having been made in the Zillah court.—*Rep. Sum. Cases, 10th Jan. 1842, p. 22.*

Appeals from the orders of P. S. A. in execution of their decrees, above 5000 rs. lie to the S. D. A.

171. Appeals from orders passed by the Principal Sudder Ameens, under Clause 6. Section 3, Regulation 7 of 1825, in execution of their own decrees in suits above the value of 5000 rupees, will lie direct to the Court of Sudder dewanny adawlut.—*Con. 1118, Hist. C. 27th April, Cal. C. 11th May 1838, par. 2.*

In the event of any claim or objection against the sale, the collector shall communicate the same to the court, & shall be guided by the instructions he may receive.

172. In the event of any claim being preferred, or objection offered, to the Collector against the sale of the lands proposed to be sold, as not belonging to the person or persons answerable for the amount of the decree, or other process, to be enforced, and consequently not liable to be sold in execution thereof the Collector shall communicate such claim, or objection, with any information which his official records may enable him to furnish on the subject, to the court which may have applied for the sale; and shall be guided by the instructions which he may receive in answer, whether to proceed with the sale, or otherwise.—*Reg. 7, 1825, Sect. 4, Cl. 4.*

An estate being recorded in the collector's books in the name of another than him against whom execution is sued out, does not authorize the collector to decline the sale.

173. The circumstance of an estate being recorded in the Collector's records in the name of another person than him against whom the execution of the decree was sued, is not sufficient to warrant the Collector to decline to bring to sale, unless a claim were preferred or objection offered, in which case the Collector should proceed in the manner laid down in Clauses 4 and 5, Section 4, Regulation 7, 1825.—*Con. 648, 22d July 1831, par. 2.*

Case in which claimants in possession of property, sold by

174. The Court determined that claimants in possession of certain property sold by the Collector in execution of a decree against another person, cannot be summarily dispossessed.

merely because the lands had been specified in the Collector's proclamation as belonging to that other person.—*Con. 10, 18th Sept. 1805.*

the collector in execution of a decree, cannot be dispossessed.

175. I am directed by the Court to acknowledge the receipt of your letter of the 7th ultimo, representing the inconvenience arising from the refusal of the Collector of your division to carry into effect the orders of your court for the sale of landed property, and requesting the decision of the court as to whether the claims advanced for property advertised for sale under orders of a court are to be decided by the Collector, or by the court directing the sale. In reply, I am directed to inform you that, under the provisions cited by you, such claims come exclusively within the cognizance of the court ordering the sale.—*Con. 794, West. C. 12th June, Cal. C. 5th July 1833.*

Claims to property advertised for sale by order of a court are exclusively cognizable by the court ordering the sale, not by the collector.

176. With reference to a question recently brought before the Court touching a construction of Clause 1, Section 4, Regulation 7 of 1825, in respect to the power of a Collector to postpone a sale under the circumstances contemplated by that clause, I am directed to acquaint you that it has been ruled by the Court that no power is thereby vested in a Collector of postponing the sale, without an express injunction from the court ordering the sale to that effect; and unless such injunction be received, the sale should accordingly take place on the date fixed.—*Cal. Ord. 11th Sept. 1840, par. 1.*

No collector can postpone a sale without the express injunction of the court ordering the sale.

177. In all cases of a claim, or objection, being communicated by a Collector to the court, enforcing a decree or other process, under the foregoing clause, or of a claim to lands proposed for sale in execution of judicial process, being received from the claimant, by the Judge, or other officer, who may have required the sale, it shall be his duty to enter upon an immediate summary enquiry into the truth and foundation of such claim; and if it appear proper he shall instruct the Collector to postpone the intended sale until such enquiry shall have been completed. Provided however, that such postponement shall not be necessary when the claim, or objection, may not have been preferred within a reasonable time, after the Collector's publication of the intended sale, and may appear to have been intentionally delayed, with a view to obstruct the sale. In such cases the court may order the sale to take place; and refer the claimant to a regular suit, in prosecution of his claim.—*Reg. 7, 1825, Sect. 4, Cl. 5.*

In cases where objections are communicated by collectors, or claims preferred to lands ordered for sale, the judge, &c. to institute a summary enquiry, and if requisite to instruct the collector to postpone the sale.

Such postponement to be held unnecessary if the claim has not been preferred within a reasonable period.

178. Inconvenience has been found to result from the practice, which obtains in some districts, of forming into one case all objections which may be preferred by different parties to the sale or transfer of property, in execution of decrees of court. To obviate this, it has been ordered that every petition containing objections of the above nature should constitute a separate misl, or case, and any documentary or oral evidence adduced in support or refutation thereof, together with the decree-holder's answer, should be carefully filed with such petition, and kept distinct from all other cases involving claims to the same property, each misl being endorsed as in the margin.\* In like manner when an appeal may be

Every objection to the sale of property in execution of a decree will constitute a separate misl.

\* No. 1, Ram Sing, oorn dar, connected with case No. 21, execution of decree in case No. 351, Sheochurn, plaintiff, (or appellant) versus Kasinaudi, defendant, (or respondent)

preferred from orders passed in regard to such objections, only the proceedings in the particular case to which the appeal may relate, should be forwarded to the appellate court, unless otherwise directed, with copies of the

When an appeal is preferred from orders made upon such objections, only the proceedings in that

decree, of the decree-holder's application suing out execution of the same, and of the nazir's

But all papers regarding the execution of the same decree will be kept in one bundle.

report relative to the attachment of the property and the issue of the prescribed notices. It will still however, be proper that all papers relating to the execution of the same decree should be kept in one bundle with the proceedings in the case to which the decree has reference, a list being annexed thereto of the number of objections preferred in the course of its execution, with distinguishing marks corresponding with the endorsements above prescribed.—*Cir. Ord. Cal. C. 7th, West. C. 21st Dec. 1838.*

Cases of resistance of process to be likewise kept separate.

179. Cases of resistance of process should also be kept separate in the same manner ; the report of the resistance forming the commencement of each misl or case.—*Ibid.*

The order of a judicial officer for the sale of real property in execution of decrees, when claims are preferred within the period of the proclamation, will not be carried into effect till the expiration of the period allowed for appeal.

180. The Court having taken into consideration the Circular order, under date the 6th of June, 1824, directing that in case of sales of real property under Regulation 7, 1825, the proceeds be kept in deposit, until the period allowed for preferring objections to the sale shall have expired, and possession given to the purchaser ; and advertg to the abolition of the controlling power of the Provincial courts, and the increased distance to which persons dissatisfied with the zillah and city Judges' order have now to proceed ; direct that the order of a Judge, or other judicial officer, for the sale of real property in execution of decrees, in cases where claims may be preferred to the property advertised, or objections made to the sale of it, within the period of the proclamation, shall not be carried into effect till the expiration of the period of appeal already allowed by Clause 5, Section 3 of the Regulation above quoted, which shall be calculated from the date of the final order of sale ; excluding from the calculation the interval which may have elapsed between the date on which the required stamped paper may have been furnished by the party to the court, and that on which the copy of the order in question may have been tendered or delivered to the party requiring it.—*Cir. Ord. Cal. and West. C. 19th July 1833.*

Explanation and application of the words "or objections made to the sale of property within the period of the proclamation"

181. I am directed by the Court of Sudder dewanny adawlut for the Western Provinces to acknowledge the receipt of a letter from you under date the 15th instant, requesting to know whether the following expression in the Circular letter of the 19th July, 1833. "or objections made to the sale of property within the period of the proclamation," is to be understood as including objections made by defendants, against whom the process has been taken out, to the sale of their own property, or those only which may be urged against such sale by claimants of the property of other individuals. In reply, I am directed to acquaint you that the expression in question must be considered equally applicable to defendants as to other individuals, who may have objections to advance to the disposal of property advertised for sale by public auction in satisfaction of a decree of court.—*Con. 841, West. C. 22d Nov., Cal. C. 6th Dec. 1833.*

The C. O. of 19th July, 1833, does not allow a new postponement on the rejection of every petition objectg thereto, but merely prohibits the order of the sale to be executed for three months.

182. Since the Court's order, to delay sales of real property in satisfaction of decrees for three months from the date of any order disallowing a claim to the same, it has become a practice to cause petitions of claims to be presented the day previous to that fixed for the sale, not with a view of eventually establishing any claim, but for the sole purpose of getting the prayer disallowed, and obtaining a delay of three months, at the end of which, a new petition of claim is ready to be thrown in by another hand, so that the execution of decrees becomes delayed *ad infinitum*. I request specific instructions on this point, i. e. whether petitions thus dropped in the day before that fixed for sale, without documents or any sort of support, are to be permitted to postpone the sale for three months. I request you will lay this letter before the Judges for

their orders ; in the meantime it is my intention to act under the Regulation above quoted.—I am directed by the Court to acknowledge receipt of your letter of the 11th instant, No. 117, and in reply to observe that you have mistaken the intent of their Circular order of the 19th July last, which was not to allow a new postponement of the sale on the rejection of every petition objecting thereto, but merely to prohibit the order for sale being carried into execution for three months, that is, until the expiration of the period prescribed for appealing, with a view of enabling the parties dissatisfied with it, to prefer their appeal within that period.—*Con. 877, 27th March 1834.*

183. The Court take this opportunity of noticing an erroneous practice which has been found to be generally prevalent, in giving effect to the rule contained in the commencement of the Circular order above alluded to. In disposing of objections preferred by an oozardar, a date should be *at once* fixed for the sale—the prescribed period for the institution of an appeal being however invariably allowed, and the practice which is found to obtain extensively, of postponing in the first instance the further consideration of the case for the above term, and after its expiry issuing the customary orders for the sale process, should be abandoned as having a tendency to delay unnecessarily the ultimate execution of the decree.—*Cir. Ord. 11th Aug. 1813, par. 2.*

In disposing of the objections of an oozardar, a date should be *at once* fixed for the sale, allowing the prescribed period for appeal.

184. I am directed to inform you that the view taken by you in your letter of the 14th May last, No. 20, in regard to the retention of the proceeds of sales in execution of decrees, is in the opinion of the Court perfectly correct, and I am instructed to take this opportunity of briefly stating the measures which should be adopted in such cases.—*Con. 1027, West. C. 15th, Cal. C. 29th July 1836, par. 1.*

Course to be adopted regarding the retention of the proceeds of sales in execution of decrees.

185. When claims or objections are preferred to the zillah Judge before the sale, and rejected by that officer, the sale must be postponed for three months from the date of the Judge's order.—*Ibid, par. 2.*

When claims or objections are preferred to the judge before the sale and rejected, it must be postponed for three months.

186. When objections are preferred to a zillah Judge after the sale, and by him similarly rejected and the sale confirmed, the purchase money must be kept in deposit for three months from the date of the order of the Judge rejecting the petition and confirming the sale.—*Ibid, par. 3.*

When they are preferred after the sale and rejected, the purchase money must be kept in deposit three months.

187. If on the other hand no claims are preferred before the sale, it may take place in thirty days, and if, after the sale, no objections are preferred within thirty days, the purchase money may, in like manner, be paid to the decree-holder at the expiration of that period.—*Ibid, par. 4.*

If no claims are preferred before the sale, it may take place in 30 days, if no objections are made after the sale, the money may be paid away in 30 days.

188. There is yet another difficulty to which I must allude. The realization of the amount decreed being thus indefinitely postponed, (should my construction of the Court's order be correct,) on whom should the demand for interest accruing thereon be made? Any delay in the non-receipt of the full amount by the decree-holder is not the act of the individual against whom judgment is given, though in many cases perhaps originating in his collusion with connexions or dependants, one of whom is put forward as a claimant as often as the lands are advertised ; to charge him therefore with interest would be unjust ; the decree-holder, on the other hand, is entitled to interest on his decree till the whole amount is discharged.—With reference to paragraph 5 of your letter of the 18th March last, No. 16, I am directed to inform you that

The court may impose the payment of the accruing interest of the debt on any claimant whose objections appear collusive, litigious, vexatious, or unfounded.

the Court consider it competent to you, under the circumstances stated, to impose the payment of the accruing interest of the debt on any claimant, whose objections may in your judgment be evidently collusive and litigious, or vexatious and unfounded, subject of course to an appeal to this Court.—*Con. 1010, Cal. C. 3d, West. C. 24th June 1836.*

How the accruing interest is to be calculated

189. The accruing interest, the payment of which may be imposed under Construction 1010, on any claimant, whose objections are evidently collusive and litigious or vexatious, and unfounded, should be calculated upon the amount thereby affected, and not upon the whole amount of the decree.—*Rep. Sum. Cases, 3d March 1846, p. 77.*

This interest must be recovered by the decree-holder.

190. The interest, with which a claimant may be charged under Construction 1010, should be recovered from him by the decree-holder.—*Rep. Sum. Cases, 10th March 1847.*

A judgment creditor is entitled to interest on money, the payment of which is delayed by frivolous objections

191. A judgment creditor is entitled to interest on a sum of money, realized by the sale of his debtor's property and deposited in court, but of which payment to the creditor is delayed in consequence of frivolous objections raised by the defendant.—*Rep. Sum. Cases, 27th Dec. 1842, p. 42.*

The institution of a regular suit to set aside a sale of property, no reason for withholding possession from the purchaser.

192. The institution of a regular suit to set aside a sale of property sold in execution of a decree of court, is no sufficient reason for withholding possession of the property from the purchaser.—*Rep. Sum. Cases, 13th Sept 1841, p. 17*

The court is at liberty, after holding a summary investigation into the claims of objectors to the execution of a decree, to quash any lease which is evidently fraudulent.

193. I am directed by the Court to inform you that Section 4, Regulation 41, 1793, is resembled by Regulation 18, 1812, but that under the circumstances stated by you, you are authorised in cases of execution of decrees, after holding a summary investigation into the claims of the parties concerned to quash any lease which may be satisfactorily shewn to be fraudulent, leaving the party dissatisfied with your decision to appeal summarily to this Court, or institute a regular suit to recover possession of their alleged rights.—*Con. 1059, 2d Dec. 1836.*

## SECTION VIII

### *General Principle for the Guidance of the Courts in disposing of these Claims to Land sold in execution of Decrees.*

In all cases of sale of property, the bidder shall be apprised that nothing is guaranteed to them beyond the rights and interests of the individuals answerable for the amount of the decree

194. In all cases of a public sale of property, under this Regulation, it shall be clearly explained to the bidders at the sale, that nothing is guaranteed to them in the land, or other property sold, beyond the rights and interests therein of the individuals answerable for the amount of the decree, or other process, in execution of which the sale is made.—*Reg. 7, 1825, Sect. 3, Cl. 7*

Rule of practice when the property to be sold has a prior lien of a mortgage

195. An erroneous practice being believed to prevail in respect to the mode of conducting sales in satisfaction of decrees, when the property to be sold has on it the prior lien of a mortgage, I am directed to communicate, for the information and guidance of your own and the subordinate courts, the following rule.—*Cir. Ord. 4th Sept. 1840, par. 1.*

No summary investigation will be made into the claims of a mortgagee, as only the defendant's right and interest in the property are sold

196. It has been recently ruled by the Court that the summary investigation often made into the claims of a mortgagee who may assert a prior mortgage on such property, is irregular and supererogatory; the defendant's right and interest in the property being alone sold with the incumbrance of any prior mortgage, and the law providing that bidders at such sales be clearly apprised that nothing is guaranteed to them in the land or other property sold beyond such right and interest.—*Ibid, par. 2.*

197. The Court are of opinion that on prior claims being asserted before the completion of the sale, the existence of such claims should be made known by the officer conducting the sale, to the bidders, and be recorded by him in the roobukaree of sale.—*Cir. Ord. 4th Sept. 1840, par. 3.*

If prior claims are asserted before the completion of the sale, they should be made known to the bidders, and recorded in the roobukaree.

198. With a view to define and fix the practice of the judicial tribunals, in disposing of cases involving objections to the sale of property in execution of decrees, the Courts of Sudder dewanny adawlut at Calcutta and Allahabad have determined on adopting the following rules hereby prescribed for the guidance of the courts —*Cir. Ord. 10th June 1842.*

Rules for defining and fixing the practice of the courts in disposing of objections to the sale of property in execution of decrees.

199. The objections usually brought forward to the sale of property, moveable and immovable, in such cases are of three kinds. 1, That the property advertised for sale is already mortgaged to the objector. 2, That the party liable for the claim in satisfaction of which the property is advertised for sale, has only a limited interest therein, there being other shareholders, including the objector, and the property being undivided. 3, That the party liable for the demand has no interest whatever in the property attached and advertised for sale, never having possessed any, or whatever interest he or his ancestors may have enjoyed therein having been previously transferred by them either to the objector, or other party from whom he may have derived the right, by a deed of sale, gift, or other mode of absolute conveyance.—*Ibid, Rule 1*

These objections are usually of three kinds.

200. It has been already ruled, as regards the *first* class of objections, in Circular order, No. 106, dated 4th September, 1840, that no summary investigation is to be made into the claim of the mortgagee, the auction purchaser standing in precisely the same position to the property after, as the mortgagee did before, the sale, and the rights and interests of the mortgagee being in no way affected by such sale. It was at the same time provided, that the existence of such prior claims should, time permitting it, be made known by the auctioneer to the bidders at a sale. The principle which governs this rule is, that the objector does not deny the fact of the defendant having some right and interest in the property, so that the result of any investigation which should be made, would not be the total prohibition of the sale, but simply the determination of the extent of the objector's right and the validity of his lien, which cannot properly be affected by summary enquiry.—*Ibid, Rule 2*

1st objection, that the property advertised for sale is mortgaged to the objector.

No summary claim is to be made into the claim of the mortgagee.

But the existence of such claims is to be made known to the bidder.

201. A similar principle will guide the disposal of objections under the *second* head, viz. where the objector may claim to have a share in the property attached and advertised for sale, and may pray that such share be exempted from sale, and that the sale may be restricted to the share of the person liable for the demand in satisfaction of which the property has been advertised for sale. The courts will, therefore, refuse to take cognizance of such objections, with a view of determining in the miscellaneous department, the specific amount of the share in the property advertised for sale, of the party liable for the demand, as well as of the objecting parties, in order to the restriction of sale to the share of the former, and the exemption from sale of the share or shares of the latter, since the rights and interests only of the party liable for the demand being sold, such sale cannot affect injuriously the rights and interests of any other shareholders in the property. In such cases, also, intimation should be given by the auctioneer at the time of sale of the claim brought by the objector or objectors to the property.—*Ibid, Rule 3.*

2d objection, that the objector claims a share in the property to be sold, and that his share may be exempted from sale.

The courts will not take cognizance of this objection in the miscellaneous department, nor except the land claimed from sale.

Only the right and interest of the party liable for the demand is sold, and the sale cannot injuriously affect the interests of any other shareholders.

3d objection, that the land is *not* the property of the debtor, should be summarily investigated.

In the investigation, possession is the sole point to be looked to

If the possession of the claimant is clearly established, the sale must be stopped

202. With respect to the *third* class of objections, viz. claims founded on unconditional purchase, or other absolute acquisition of the property put up for sale, the plea advanced being that the latter is not the property of the debtor, the courts have ruled that such claims *should* be made the subject of a summary investigation, because on the result depends whether the contemplated sale shall take place at all or not. The principle, however, which will govern all such enquiries shall be that *possession* is the sole point to be looked to and determined in the miscellaneous department, and that, should the possession of the objector or claimant, prior to the attachment of the property or advertisement of sale be satisfactorily established, sufficient ground will be held to exist for stopping the sale, without enquiry into the validity of the alleged title, any dissatisfied party being left to bring a regular suit.—*Cir. Ord.* 10th June 1842, *Rule 1*.

These sales convey to the purchaser nothing beyond what was enjoyed at the time of the sale by the debtor, and the courts will merely place the purchaser in the position of the defendant

The above rules apply equally to movable property

203. It must be expressly borne in mind that sales of the description contemplated convey to the purchaser nothing beyond what was enjoyed at the time of sale by the person whose interests are sold; and the court, in the execution of its process, will only place the purchaser in the position, with respect to the thing sold, in which it found the defendant.—*Ibid*, *Rule 5*.

204. The above rules will be considered equally applicable to movable and immovable property.—*Ibid*, *Rule 6*

Further explanation of the rule given above, that possession is the general principle for the guidance of courts in deciding claims to property about to be sold

205. The Court having observed that considerable misapprehension exists as to the right construction of paragraph 4 of the Circular order, No. 205, of the 10th January, 1842, direct me to communicate to you the following remarks and instructions for future guidance. The object of the rule adverted to was to lay down a *general principle* for the guidance of the judicial authorities, in deciding upon claims to property attached in execution of decrees of court. The principle was that possession was the sole point to be looked to and determined in the miscellaneous departments. This, however, did not contemplate that execution was to be stayed, if for instance, the heir of a debtor, who died after judgment given, was in possession of the estate of the deceased, nor indeed did it contemplate anything but an actual *bonâ fide* possession (as far as that could be summarily ascertained,) under a title adverse to the right of the debtor, and therefore such a right as would bar execution of the decree obtained; nor was it intended to deprive the Courts of justice of that discretionary power vested in them to decide upon the fact according to the evidence adduced, as to whether the claim of the objector rested upon an actual and *bonâ fide* possession, or involved merely the allegation of a fictitious, and fraudulent transaction. The Court therefore desire that in adjudicating such claims, the judicial authorities will still act upon the principle laid down in the rule adverted to, the application of the principle must be left to the discretion of the courts, with reference to the merits of each particular case.—*Cir. Ord.* 21st May 1847.

The sale will be annulled if the non-existence of any rights and interests of the debtor be established.

Objections to a coming sale, alleging possession on the part of the objector must be enquired into before the sale.

206. The purchaser at a sale in satisfaction of a decree of court, of a party's *rights* and *interests*, is entitled to have the sale annulled, and recover the sale proceeds on the non-existence of any *rights* and *interests* being established.—*S. D. 1. Sel. Rep.* 8th June 1846, vol. 7, p. 262.

207. Objections to a coming sale in satisfaction of a decree, alleging possession on the part of the objector, must be enquired into before the sale can take place.—*Rep. Sum. Cases*, 27th Jan. 1846, p. 75.

## SECTION IX.

*Cases in which the Sale of Lands sold in satisfaction of a Decree may, or may not, be reversed—Institution of a Regular Suit.*

208. The usual processes for attachment and sale, in such cases, may either be issued successively, or simultaneously as the Judge, Register, or other judicial officer, directing the sale, may in each instance think proper, with reference to the circumstances of the case. But no sale shall, in any instance, take place without a previous proclamation, for the period specified in the preceding clause; and any material irregularity in the sale, which may be established, on a summary enquiry to the satisfaction of the Judge, Register, or other officer, by whom the sale may have been ordered, shall be sufficient to invalidate the sale; provided that a petition, written on the stamped paper required for miscellaneous petitions to the Zillah and City courts, and stating circumstantially the irregularity which may have taken place, be presented to the Judge, Register, or other officer, by whom the sale may have been ordered, within one month after the sale.—*Reg. 7, 1825, Sect. 3, Cl. 3.*

The usual processes for attachment, and sale may be issued simultaneously.

No sale to take place without the specified proclamation being made, and any material irregularity will render the sale liable to be declared invalid.

If a petition on stamped paper be presented within one month after the sale.

209. Whenever a public sale may be set aside, as invalid, under the preceding clause, or on any account whatever, and no collusion, or fraud shall appear on the part of the purchaser, he shall be entitled to receive back his purchase money, on restoring any property delivered over to him, with or without interest, in such manner as it may appear proper to direct in each instance.—*Ibid, Cl. 4.*

In cases where sales are annulled and no collusion appears, the purchaser to have his purchase money returned with or without interest as may appear proper.

210. The summary decision passed by the zillah or city Judges, or Registers, under this section, shall be open to a summary appeal to the Provincial [now Sudder] courts, under the general rules for such appeals.—*Ibid, Cl. 5.*

Summary decision passed by judges or registers appealable to the provincial courts.

211. A doubt having been entertained whether public sales of land, made by the revenue officers of Government, in satisfaction of decrees or other process of the Courts of judicature, can be summarily set aside, without a regular civil suit, or proof of irregularity in publishing and conducting the sale, or otherwise; it is hereby declared, that the Zillah or City court, or other judicial authority, who may have ordered the sale in such cases, shall be competent to declare the same null and void, and to order a resale in the mode prescribed by the Regulations, if, on summary enquiry, any material deviation therefrom, and consequent irregularity in the sale, be satisfactorily established; provided that a petition containing a circumstantial statement of such irregularity, and written on the stamped paper required for miscellaneous petitions in the Zillah and City courts, be presented to the court by which the sale may have been ordered, within a month after the sale. In such cases the Court directing the sale to be set aside shall further be competent to direct a return of the purchase money, with or without interest as provided for in similar cases, by the fourth clause of Section 3 of this Regulation.—*Ibid, Sect. 5, Cl. 1.*

All judicial authorities who may have ordered sales of lands by revenue officers empowered to declare such sales null and void, and to order a resale, if on summary enquiry, any material irregularity be satisfactorily established.

Proviso

In certain cases the purchase money to be returned with or without interest.



Summary decisions passed under this section appealable to the provincial courts

212. The summary decisions passed under this section shall be open to a summary appeal to the Provincial [now Sudder] courts, under the general rules for such appeals.—*Reg. 7, 1825, Sect. 5, Cl. 2.*

Inadequacy of price is not a legal ground for annulling an auction sale in execution of a decree

213. The Court are of opinion that the practice alluded to in this extract, of ordering a resale of property, on the ground that the sum realized has, for special reasons, been extremely small, is illegal, the Judge is competent to take every precaution to prevent the sale of property for less than its marketable value, but after the sale has been once closed and the bidder been given to understand that he is the purchaser for the sum offered, the property cannot on this ground be again offered for sale, having become the right of the purchaser—*Con. 829, West C 20th Sept, Cal. C 18th Oct. 1833, par. 2*

A compromise between a decree-holder and a debtor, not duly intimated, is no ground for the reversal of the sale.

214. A compromise between a decree-holder and his debtor, of which timely intimation was not given to the court executing the decree, held to be no sufficient ground for reversal of the sale of the debtor's property made in execution of such decree.—*Rep. Sum. Cases, 25th March 1841, p. 4.*

Notice to a civil court of a compromise or payment of a debt after the sale no ground for its summary reversal

215. Notice given to the Civil court of a compromise, or payment of a debt due under a decree, after the sale of the debtor's property in execution thereof, is no ground for the summary reversal of the sale—*Rep. Sum. Cases, 24th April 1843, p. 48.*

Case in which a compromise made before the sale, which did not reach the court till afterwards, is not a sufficient cause for the reversal of the sale

216. An order of court to stay the sale of property founded on a statement that the debt for satisfaction of which the sale had been ordered, had been settled, is insufficient cause for the reversal of the sale, if it shall appear that information of the compromise was not given to the court in time enough to stay the sale—*Rep. Sum. Cases, 27th Dec. 1842, p. 42.*

Case of a sale reversed for an irregularity in suspending the notice of it

217. A sale of property made in execution of a decree of court, reversed in consequence of the notice of sale having been suspended at the Police thanmah of a division other than that in which the property was situated—*Rep. Sum. Cases, 7th Sept 1841, p.*

If the collector deems the order issued by a civil court illegal, he must nevertheless comply with it, appealing to higher authority

218. In case of a sale of property (sold in execution of a decree) being reversed, and the deposit (previously forfeited to Government) ordered to be restored, the revenue authorities are bound to comply with the Court's order, appealing therefrom, if dissatisfied.—*Con. 1110, 20th Oct. 1837.*

The institution of a regular action by a claimant after the summary rejection of his claim, does not bar the sale of the rights and interests of the judgment debtor.

219. The institution of a regular action by a claimant, after summary rejection of his claim, to property advertised for sale in execution of a decree, does not necessarily bar the immediate sale of the rights and interest of the judgment debtor—*Rep. Sum. Cases, 14th March 1842, p. 24.*

Where summary suits to set aside irregular sales of land in execution of decrees must be instituted.

220. Summary suits (Regulation 7, 1825, Section 5,) to set aside irregular sales of land made by revenue officers in satisfaction of decrees of court, will be received and tried in the first instance by the court ordering the sale, subject to the prescribed appeal. If the sale have been made by order of the Judge, he may refer the case for investigation, and report to a Principal Sudder Ameen, or Sudder Ameen, reserving to himself the final decision.—*Govt. Ord. 15th Jan. 1834, No. 6*

The rejection of a summary application to reverse a sale in

221. Held that an action, by the late proprietor, to set aside a sale made in execution of a decree, an application to reverse which has been summarily rejected under the provisions of

Section 5, Regulation 7, 1825, by the courts of original and appellate jurisdiction, is not barred either by the terms of that section, or by the rule of Construction No. 1129.\*—*S. D. A. Sel. Rep.* 12th June 1841, vol. 7, p. 35.

execution of a decree, does not bar an action for that purpose.

## SECTION X.

*Disposal of the Proceeds of the Sale of Lands sold in execution of Decrees.*

222. The Court of Sudder dewanny adawlut having lately had occasion to consider the rules connected with the sale of lands, and with a view to the protection of the rights of individuals who may be subsequently discovered to have an interest in such property, deem it expedient to direct, that in every case of a sale of real property taking place under Regulation 7, 1825, the proceeds may be kept in deposit until the period allowed by Clause third, Section 3, and Clause first, Section 5 of that Regulation for preferring objections to the sale with a view to its immediate annulment shall have expired, and until possession shall have been given to the purchaser.—*Cir. Ord.* 6th June 1828.

The successor of a judge cannot reverse a sale on the application of the late proprietor, presented some months after the sale

223. The Court notify for the information and guidance of the zillah and city Judges in the lower provinces, that that portion of Circular order, Sudder dewanny adawlut, No. 1, dated 6th June, 1828, which prescribe the retention of proceeds of sale in deposit "until possession shall have been given to the purchaser," has been ruled, by the concurrent opinion of both Courts of Sudder dewanny adawlut, to be beyond the requirements of the law and practically inexpedient and inconvenient, and has been accordingly cancelled.—*Cir. Ord.* 11th Aug. 1843, *par.* 1.

The proceeds of the sale will be kept in deposit till after the period for preferring objections to the sales has lapsed.

224. The rule contained in the Circular order, Sudder dewanny adawlut, 6th June, 1828, for retaining the purchase money in deposit until the period for preferring objections to the sale has elapsed, and possession been given to the purchaser, does not apply to the case of a purchaser who refuses to take possession when tendered. In such case the money should be paid to the decree-holder and the purchaser warned that he must abide the consequences of his refusal.—*Con.* 532, 14th Dec. 1829.

But this rule does not apply to the case of a purchaser who refuses to take possession, when tendered. In this case, the money must be paid to the decree-holder.

225. An instance having lately been brought to the notice of the Court, in which a zillah Judge had inadvertently paid away the amount proceeds of the sale of real property in direct opposition to the Circular order on this subject, dated 6th June, 1828, I am directed by the Court to call your particular attention to the instructions laid down in that letter, and to inform you that the Court must hold any zillah Judge paying away money from his treasury contrary to the Regulations of Government, or to the express orders of this Court, personally responsible for the same.—*Cir. Ord. Cal. and West. C.* 2d Jan. 1836, *par.* 1.

The judges are strictly enjoined not to pay away the money, the proceeds of the sale, till the period for preferring an appeal has expired.

[Iude also Construction 1027, *paras* 1, 3 and 4, Nos. 154, 156, 157, of this chapter.]

226. With a view to prevent the occurrence of similar irregularities in future, I am further directed by the Court to forward you a form of proceeding, which you will be pleased invariably to record in your Persian roobukaree in all sale cases, following the words of the form as far as may be practicable in each individual case.

To prevent this irregularity the S. D. A. prescribes a form of proceeding which the judge will invariably record in all sale cases.

\* Miscellaneous orders passed in execution of decrees carrying into effect the original intention of the court, must be considered as final and not constituting a new ground of action.—*Con.* 1129 *Cal. and West. C.* 9th Feb 1838

*Form to be recorded in the Persian Roobukaree.*

Form.

"For the above reasons objections of the claimant, [or of the *oozardar*,] are in the judgment of the Court, without foundation, or fraudulent. It is therefore ordered, that, agreeably to Section 5, Regulation 7, 1825, the sale be confirmed, and a copy of this proceeding be sent to the Collector for his information; and it is further ordered that the *nazir* do put the purchaser into possession of the property purchased, and that a *purwannah* be sent to the treasurer to hold, agreeably to Circular order of the 6th June, 1828, the amount proceeds of the sale in deposit for three months from the date of this *roobukaree*: at the expiration of which date the *nazir* will report whether the purchaser has been placed in possession or not, when a final order will be issued for the payment of the money."—*Cir. Ord. Cal. and West. C. 2d Jan. 1836, par. 2.*

It is improper to deduct from the sale price any arrears of revenue due from the mehal, in which the rights of any one may be brought to sale.

227. The Sudder board of revenue having had under consideration the practice which obtains in regard to the disposal of the proceeds of sales made by orders of the Civil courts, are of opinion that as by Regulation 7, 1825, such sales are declared to convey only "the rights and interests of the individuals answerable for the amount of the decree in execution of which the sale is made," they should be treated, so far as Government is concerned, as mere private transfers; and that it is alike unnecessary and inexpedient to deduct from the sale price any arrears of revenue due from the mehal, in which the rights and interests of any person or persons may be brought to sale. Such a course is obviously unfair and inequitable when the party, against whom the process is enforced, possesses only a limited share in a joint undivided estate: and it is in all cases objectionable, as tending to confuse two very different processes, and to infringe the great principle of the hypothecation of the land itself for the revenue assessed upon it.—*Cir. Ord. 15th Oct. 1811, par. 1.*

The collector will be careful to explain that the purchaser succeeds to the liabilities of the former proprietor and that the govt. claims are not affected by the sale.

228. The board are therefore pleased to direct that the practice above alluded to be discontinued, and that the Collectors be instructed to be careful in causing it to be distinctly understood, in every case of sale held in satisfaction of a decree of court or other similar claim, that it is a condition of the sale, (see Section 15, Regulation 15, 1793,) that the purchaser succeeds to all the liabilities of the former proprietor, and that the Government claims against the mehal are in no degree affected by the sale.—*Ibid, par. 2.*

## SECTION XI.

*Limitation of Time for instituting a Suit for the execution of a Decree.*

*The limitation of time, for instituting a suit for the execution of a decree, is founded upon the following enactment:*

Courts not to try the merits of any suit where the cause of action shall have arisen before the 12th Aug. 1765

Nor any suit where the cause of action shall have arisen

229. The Zillah and City courts are prohibited hearing, trying, or determining the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th of August, 1765; or any suit whatever against any person or persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it; unless the complainant can shew by clear and positive

proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money: or that he directly preferred his claim within that period for the matters in dispute, to a court of competent jurisdiction to try the demand: and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress.—*Reg. 3, 1793. Sect. 14.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Couq Prov. Reg. 5, 1803, Sect. 4.*

twelve years before a suit shall have been commenced for it.

Exception to the rule

230. The Court of Sudder dewanny adawlut, in reply to a reference from the Dacca Provincial court, determined, on the 8th of April, 1802, that a decree not enforced during a period of twelve years and upwards, might be put in execution, on application for that purpose, without a fresh suit; provided the party holding it explain satisfactorily the cause of the delay, and no valid objections are offered by the adverse party.—*Con. 3, 8th April 1802.*

A decree may be executed after 12 years, if good & sufficient cause be shown for the delay

231. A decree not carried into execution, at the time of its being passed, may be executed on application being made for that purpose, within twelve years from the date of the decision after calling upon the opposite party to show cause why the judgment should not be carried into effect against him; should the party, however, holding the decree, neglect to make application for enforcing the judgment in his favour within the period above specified, the Court are of opinion, that the application ought not to be admitted, without his establishing, to the satisfaction of the court, good and sufficient cause for the delay.—*Con. 136, 28th Oct. 1813.*

Rule regarding the execution of a decree within 12 years of its being passed, and, also, after that time

232. Execution of a decree thirteen years after the date thereof disallowed.—*S. D. A. Sel. Rep. 16th Nov. 1818, vol. 2, p. 280*

Execution after 13 years, disallowed

233. Claim to the amount of a decree in favour of the ancestor of the plaintiff, passed twenty-four years before, disallowed on presumption, arising from lapse of time and other circumstances, that it had been satisfied. No institution fee levied, and one-fourth only of the regular costs made payable as in summary suits.—*S. D. A. Sel. Rep. 5th March 1811, vol. 1, p. 317.*

Claim to the amount of a decree passed 24 years before, in favor of plaintiff's ancestor, disallowed

234. The orders of the Zillah court rejecting the summary application of the petitioners to execute their decree sixteen years after date thereof, affirmed on appeal by the Sudder dewanny adawlut.—*Rep. Sum. Cases, 9th April 1839, p. 19*

A summary application for the execution of a decree 16 years after the date of it, rejected

235. In a suit to cause execution of a Moonsiff's decree, the cause of action must be considered to have arisen from the expiration of one year from the date of the decree, and such suit instituted 14 years after the date of the decree would be inadmissible, unless good and sufficient cause were shewn for the delay.—*Con. 495, 27th Feb. 1829.*

In executing a moonsiff's decree, the cause of action arises from the expiration of one year from the date of the decree. A suit instituted 14 years after, inadmissible

236. On a reference from the additional Judge of Benares, as to the right of Government to take out execution of a decree in its favor, after the expiration of 12 years from the date of judgment, it was held that the terms of Section 2, Regulation 2, 1805, which Section declares claims on the part of Government to be cognizable by the courts, if preferred within 60 years from the origin of the cause of action, have reference to "hearing, trying, and determin-

Govt decrees like those of private individuals may be executed after 12 years, on good and sufficient cause shown for the delay.

The rule of limitation regarding sixty years refers to claims preferred, not to claims adjusted

ing" by the Courts of civil justice of all *claims preferred* on the part of Government, but do not extend to the case of claims *already adjudged*: and that, therefore, Construction No. 136, declaring that decrees may be executed after 12 years, provided good and sufficient cause for the delay be shewn, must be the rule of guidance in all cases whether the decree be in favor of Government or a private individual.—*Con. 1348, West. C. 1st, Cal. C. 22d July 1812.*

## SECTION XII

### *Aid of the Collector and of other Courts in the execution of Decrees.*

The civil courts may require the aid of the collectors in the enforcement of decrees relating to *indgozatee* land, whenever it may appear conducive to their speedy and complete execution

237. By the existing Regulations the Judge of the Zillah and City courts, are required to transmit to the Collectors of their respective jurisdictions, (as well as to the Board of Revenue) copies of all decrees which may be passed by them, or by their Registrars; or which may be sent to them for enforcement by the superior courts; affecting the proprietary right to, or possession of, any lands paying revenue to Government, or held exempt from the payment of revenue; for the purpose of enabling them to make the requisite entries and alterations in the periodical registers of land. The Judges of the several Civil courts are further hereby authorized to require the aid of the local Collector, in the enforcement of all such decrees, whenever it may appear conducive to their speedy and complete execution, whether by giving possession to the parties entitled thereto, or by the adjustment of a waslat account, or otherwise. —*Reg. 7, 1825, Sect. 6*

The judicial officers should avail themselves of the assistance of the revenue officers in the enforcement of decrees regarding the proprietary right of land.

238. The Court entirely concur in the opinion expressed in the letter, [letter of the secretary of the Sudder Board,] as to the expediency of the judicial authorities availing themselves, so far as may be practicable, of the assistance of the revenue officers, under the provisions of Section 6, Regulation 7 of 1825, in the enforcement of decrees relating to the proprietary right or possession of land, as obviously calculated to conduce, in a very material degree, to their speedy and satisfactory execution, to which department of the administration of civil justice, the Court as you are aware, attach the utmost importance. —*Cr. Ord. West. C. 30th Sept. 1836, Cal. C. 6th Jan. 1837, par. 2*

A quarterly statement of unanswered requisitions made to the collector relative to the execution of decrees, is to be forwarded to the commissioner of revenue

239. In pursuance of the order contained in the sixth paragraph of the Secretary's letter, you will be pleased to forward to the Commissioner of Revenue of the division to whose authority the Collector is subject a quarterly statement of requisitions made relating to the execution of decrees, in the form B. This need not be submitted to the Sudder court; but any particular case of delay, without sufficient cause, will be brought by you to their notice.—*Cr. Ord. 12th Dec. 1834, par. 1*

If any great delay subsequently takes place without sufficient cause assigned, the judge will bring it to the notice of the S. D. A.

240. It only remains to be added that in pursuance of the orders contained in the 6th paragraph of the letter from the Secretary to Government in the Judicial department under date 21st July, 1834, which was circulated for general information on the 12th December of that year, a quarterly statement of unanswered requisitions made to the Collector relating to the

execution of decrees, is to be forwarded in the form noted in the margin, to the Commissioner

Quarterly report of requisitions to Collector of \_\_\_\_\_ by the Civil courts of \_\_\_\_\_ relating to execution of decrees remaining incomplete on the \_\_\_\_\_ of \_\_\_\_\_ of 184\_\_\_\_.

of the division to whose authority the Collector may be subject, and in the event of any great delay subsequently taking place without any sufficient cause being assigned for it, the same is to be brought by the Judge specially to the notice of the Court.—  
*Cir. Ord. Cal. C. 7th, West. C. 21st Dec. 1838.*

Names of parties.	Date of reference	Substance of requisition	Reasons assigned by collector for non-execution.	Judge's opinion of those reasons.
A. plaintiff, versus B. defendant.	10th Jan. 1833	To put plaintiff in possession of 100 bighas of land in monzah Rannaghur, pergunnah Rampore.		
C plaintiff, versus D defendant	10th Jan 1834	To sell defendant's land in monzah Alunpore, pergunnah Alunpore, 111 bighas, 10 biswas.		

241. The Court direct, in modification of paragraph 4 of the Circular order, No. 127, of the 12th December, 1834, that no other cases be included in the quarterly statement of requisitions to the Collector relating to execution of decrees, which is transmitted to the Commissioner of the division, than those in which delay is imputable to the Collector, and is not satisfactorily accounted for by the explanatory remarks which that officer is required to append to the statement. — *Cir. Ord. 8th Nov. 1844.*

What cases are to be included in the quarterly statement of requisitions to the collector relating to the execution of decrees which is to be transmitted to the commissioner

242. The zillah and city Judges are also required to report any instances of great delay which may occur on the part of other courts called upon to assist in the execution of their decrees as well as on the part of the Principal Sudder Ameeris, Sudder Ameeris, and Mooniffs, in executing decrees of their own or other courts, when the admonition or orders of the zillah or city Judges enjoining greater diligence and attention to this part of their duty, may prove ineffectual.—*Cir. Ord. Cal. C. 7th, West. C. 21st Dec. 1838.*

The judges will report cases of delay in executing decrees by the uncovenanted judges.

243. The Court annex for the information and future guidance of the several civil Judges in the Lower Provinces, extract (par. 2) of a letter addressed by the Western Court to the

Judge of Ghazepore, touching the execution of decrees through the agency of the revenue authorities who will be guided in their conduct by the Circular orders particularized in the margin. The issue of these instructions has been intimated to the Sudder Board of Revenue Lower Provinces,

The delay in complying with these requisitions arises often from the default of the decree-holder. If, therefore, he fail to comply with any requisition, which is necessary to the execution of the decree, the collector must strike his case off the file.

Par. 5, Circular order, Sudder dewanny adawlut, No. 127, dated 12th December, 1834

Circular order, No. 163, dated 11th December, 1835, which was incorporated with Circular order, No. 28, dated 21st December, 1838, under heading No. 10, corresponding with Circular order, 7th December, of the Lower Provinces

who have been requested to address corresponding orders to the authorities subordinate to them.—*Extract of a letter dated 28th March, 1843, to Judge of Ghazepore*—It is evident from the explanations offered by the Collector, that the delay of which you complain, has been, in the majority of instances, occasioned by the default of the decree-holder in advancing ameer's fees, or his failure in other necessary process. In such a contingency, the Court see no objection to the adoption of the course suggested in the second paragraph of your letter above cited, if the case be pending before the Collector, and the decree-holder fail to comply with any requisition, obedience to which may be a necessary preliminary to the execution of his decree, the Collector might strike the case off his file and give intimation to the Judge of

his having done so. The Judge on receipt of such intimation, might adopt a similar course of procedure, and leave to the decree-holder the option of reinstituting proceedings at his discretion.—*Cir. Ord. 16th June 1843.*

Courts of justice to direct payment of the expenses of divisions in decrees awarding the proprietary right in disputed cases.

244. Whenever the Courts of justice may pass a decree awarding to any person the proprietary right in a portion of an estate paying revenue to Government (whether fractional or consisting of specific lands) and may issue a precept to the Collector requiring him to divide the estate, and (provided it be not held khaus, or let in farm by (Government) to put the parties in possession of the shares, to which they may be entitled under the decree, they shall make it a general rule to direct at the same time that the party or parties who may have withheld the right so decreed, shall defray the whole of the expense which may be incurred in the subsequent process of dividing, separating, and giving possession of, and apportioning the public revenue on the portion of the estate or lands so decreed. Provided however, that if any special reasons shall appear for a deviation from this general rule, the courts shall be at liberty to direct the expense in question to be defrayed by all, or any of the parties to the decree, in such proportions as the court passing the decree may, from a consideration of the particular circumstances of the case, deem equitable. Copies of all orders which the courts may pass under this section, are invariably to be transmitted to the Collector for his guidance, together with the precept which the court may issue to him, requiring him to divide the estate, and to put the parties in possession of the shares to which they may be entitled under the decree.—*Reg. 19, 1814, Sect. 5*

Penalty for ameen convicted of corruption in opposition to their oaths.

245. If the ameen shall be convicted before the Magistrate of the zillah of receiving or allowing any other person to receive, directly or indirectly, any money or effects, or other property from the sharers, or from any person or persons on their behalf, in opposition to his oath, he shall be sentenced to pay a fine to Government of three times the amount of the money or value of the property so received by him, or by any other person with his permission, and to imprisonment not exceeding six months; and all prosecutions before the Magistrate under this clause shall be for a criminal misdemeanor at the instance of the Collector of the district, through the vakeel of Government. It is, however, at the same time hereby further declared, that the ameen shall be also liable to a suit for the same offence in the Dewanny adawlut of the zillah, and shall on conviction be compelled to restore the money or property to the party from whom it may have been received with all costs to the party prosecuting, and be imprisoned until he shall make good the decree or the amount of it shall be liquidated by the sale of his property.—*Ibid, Sect. 13, Cl. 2.*

How the butwarah of an estate, the joint property of govt and of private individuals, is to be made

246. The butwarah of an estate, partly the property of Government, and partly of private individuals, must nevertheless be made by the revenue authorities.—*Rep. Sum. Cases. 11th March 1844, p. 57.*

## SECTION XIII.

*Default of the Decree-holder.*

247. Applications for the execution of decrees are to be considered as disposed of when the decree has been completely executed, or the case ordered to be struck off the file and placed in the record office in consequence of the failure of the decree-holder to take proper measures for the enforcement of the award passed in his favor.—*Cir. Ord. Cal. C. 7th, West. C. 21st Dec. 1838.*

When applications for the execution of decrees are to be considered as disposed of.

248. The practice of keeping on the file cases, in which the decree-holder has neglected to proceed in the execution of his decree, or in which his endeavour to point out property liable for the satisfaction of his award have proved fruitless, is inconvenient and unnecessary. Whenever the decree-holder fails for a period of six weeks to carry on the execution of his decree, or when the whole of the property pointed out by him has been either sold and the proceeds paid to the party entitled to receive the same, or released from attachment in consequence of other claimants proving their right thereto, the case should be struck off the file. In the event of a fresh application being made by the decree-holder, the case will again be brought on the file as a new or revived case of execution, and will bear the date of its re-admission, and not of its original institution, the length of time it may remain on the file being calculated accordingly — *Ibid*

When the decree-holder fails for six weeks to carry on the execution of the decree, or when all the property pointed out by him is disposed of, the decrees must be struck off the file

It may be reinstated, and will then bear the date of its re-admission

249. The Court have reason to believe that much misconception exists in regard to the 3d paragraph of Circular order, Sudder dewanny adawlut, No. 127, dated 12th December, 1834, (recapitulated in the appendix to Circular order, No. 28, dated Lower Provinces, 7th and Western Provinces, 21st December, 1834,) which requires that an application for execution of decree in which the decree-holder may fail to carry on execution for a period of six weeks, shall be, after its expiry, struck off the file. It has been found, that some functionaries have understood the Circular order in question to prohibit the expunction from the file of cases, in which the decree-holder has failed in filing schedules of property or in other necessary process within a *prescribed* and *notified* period because the "period of six weeks" had not elapsed.—*Cir. Ord. 14th Oct. 1843, par. 1.*

Misapprehension of the purport of the above circular order

250. The Court, therefore, hereby notify, that the object of the Circular order above cited, was to prescribe a *maximum* period, beyond which, in the event of neglect in prosecution, or default of any description for that period on the part of a decree-holder the case should not be allowed to remain on the file, and not to prohibit the immediate expunction of the case on the omission of the decree-holder to attend to the requisitions of the court within a specific and stated space of time.—*Ibid, par. 2.*

The object of it is, to prescribe a *maximum* period, after which the case will be struck off; but it may be immediately expunged for disregard of any specific requisition

251. The distinction consists simply in this—that whereas, in the event of a decree-holder entirely neglecting for six weeks to carry on execution of his decree, it is *obligatory* on the Judge to dismiss the case on default, and strike it off his file, it would in the other event of inattention to the requisition of the court for a period allowed for any purpose, be discretionary with the said court to pursue the same course, or to give the decree-holder another opportunity of presenting schedules of property, pointing out its location, or satisfying any other requisite process.—*Ibid, par. 3.*

Explanation of it. It does not prohibit the immediate expunction of the case, if the decree-holder neglects any requisition of the court, within the time fixed for its completion.



But the S. D. A. does not insist on the practice of prescribing fixed periods for the completion of every process and striking the case off the file for default.

252. It is, on the present occasion, the desire of the Court, simply to explain the provisions of a Circular order, which appears to have been misunderstood, and not to insist on the invariable adherence to a practice of prescribing fixed periods for the completion of every process in the course of execution, and in the event of default of striking the case off the file without further question or enquiry.—*Cir. Ord. 14th Oct. 1843, par. 4.*

#### SECTION XIV.

##### *Of the respective Right of Decree-holders to share in the Proceeds of the Sale.*

Rule for adjudicating conflicting claims of decree-holders to share in the proceeds of the sale.

253. With a view to fix the practice in respect to the proper authority for adjudicating conflicting claims advanced by decree-holders, to share in the proceeds of sales made in satisfaction of decrees passed by the subordinate courts, I am directed by the Court to communicate to you the following rule, established by judicial precedent, for the information and guidance of the covenanted and uncovenanted Judges.—*Cir. Ord. 20th Nov. 1840.*

All claims to share in the proceeds of the sale of property will be disposed of by the court ordering the sale.

254. All claims to a share in the proceeds of sales of property made in execution of decrees of court should, in the first instance, be preferred to, and disposed of by the court ordering the sale, whether such decrees may have been passed by that or by any other court, that tribunal passing an order in favour of whichever of the decree holders it may consider to be entitled to the preference; and any party dissatisfied with such order having his remedy in an appeal to the Judge, (or Sudder dewanny adawlut, as the case may be) it not being competent to the higher court to interfere, with the view of adjudicating any matter of this nature, till the point come regularly before it in appeal.—*Ibid.*

Any party dissatisfied, may appeal.

Mere priority of date gives no preference to a decree. All decrees for which process of attachment has issued, will entitle the holders to share in proportion to their claim.

255. As it appears that much diversity of opinion and practice prevails with regard to the rules for distributing in liquidation of claims under various decrees of court, sums of money which may be in deposit and are inadequate to meet the whole demand, the Court direct me to request that you will bring the subject to the notice of the Judges of the Presidency Court. The Court understand the present practice, under the sanction of the Presidency Court, to be as follows; the mere priority of date gives no preference to a decree, but that all decrees under which process of attachment has been issued, provided they are dated previous to the distribution of the deposit, entitle the holders to share in proportion to the amount of their claim; with the exception of cases in which a bona fide mortgage of the deposit in favor of a particular claim may exist.—In reply, I am directed to observe that the practice, as generally followed, appears to be as stated by you.—*Con. 935, Cal. and West. C. 22d Feb. 1835.*

All decrees under which process of attachment has been issued entitle the holders to share in proportion to their claims, except bona fide mortgages.

256. I am directed by the Court to inform you that it has been ruled by both Courts of Sudder dewanny adawlut that all decrees, under which process of attachment has been issued, provided they are dated previous to distribution, entitle the holders to share in proportion to their claims, (exception being allowed in case of bona fide mortgages,) in preference to the claimants under decrees in which no such process has been issued.—*Con. 1056, Cal. and West. C. 21st Oct. 1836.*

Further explanation of the rules for the distribution of assets among the decree-holders.

257. The Court, having observed much diversity of practice in the distribution of assets among several decree-holders under the rule prescribed by Constructions of the Sudder dewanny adawlut, Nos. 935 and 1056, are disposed to attribute it principally to a misunderstanding of

the term "process of attachment" therein occurring, and are pleased accordingly, to promulgate for general information and observance the result of a correspondence which has lately passed between the two Courts of Sudder dewanny adawlut on the subject.—*Cir. Ord.* 26th Jan. 1844, *par.* 1.

258. It has been ruled that "the process of attachment" referred to in the Constructions cited is the process issued by any *judicial* authority, for attachment of property, on the application of any decree-holder suing out execution of his decree; and that all decree-holders, who may have procured the issue of such order, prior to the distribution of assets realized by a sale of property, made in execution of a former order, are entitled to a rateable share in those assets.—*Ibid.*, *par.* 2.

All decree-holders who have procured the issue of an order of attachment before the distribution of assets, are entitled to a rateable share in them.

259. The distribution, however, of assets realized by sale of property, is directed by Circular order, Sudder dewanny adawlut, No. 1, dated 6th June, 1828, to be held in abeyance, until the period allowed by Clause 3, Section 3, and Clause 1, Section 5, Regulation 7 of 1825, for preferring objections to the sale with a view to its annulment, shall have expired, and is further liable to other impediments, which it is frequently impossible to foresee or prevent. With the object, therefore, of obviating the embarrassment too often occasioned by the multitude of claimants, who are by the present system encouraged to come forward, the Court direct that thirty days after the sale has been holden, award of distribution, in regard to the claims of all decree-holders theretofore admitted, (without reference to the possibility, or otherwise, of giving immediate effect to such award,) shall invariably issue, and that on the finality of the sale, the assets in deposit shall be distributed in accordance therewith. Subsequent to the declaration of the "award of distribution," no claims to participation in the proceeds of sale, shall be received.—*Ibid.*, *par.* 3.

Thirty days after the sale, award of distribution regarding the claims of decree-holders which have been admitted, shall issue.

On the finality of the sale, the assets will be distributed according to that award.

No claims to share in the proceeds will be admitted after "the award."

260. The civil Judges will be careful to see that their subordinates fully understand the purport of these instructions, and strictly adhere to them in practice.—*Ibid.*, *par.* 4.

These rules to be explained to the subordinate courts and adhered to.

261. Under the Circular order of 26th January, 1844, a suing out of attachment is essential to a decree-holder being permitted to share in the proceeds of sale. It is competent to the courts to exercise a discretion in awarding costs of execution before distribution of assets.—*Rep. Sum. Cases*, 18th May 1847.

Suing out of attachment is essential to a decree-holder's sharing in the assets. Costs of execution may be awarded before the distribution.

262. In an action for recovery of a debt due on a mortgaged property, a third party appears and claims a large sum under the decision of the Sudder dewanny adawlut. The Provincial court awarded to plaintiff a certain part of their claim; after that was paid, it was ordered that the holder of the decree of the Sudder dewanny adawlut should receive what was due to him thereon, and that the plaintiffs should then receive the balance of their claim. The third party appealing to the Sudder dewanny adawlut, it was ordered that he should receive the whole of the sum due under the decree, before the plaintiffs were paid any part of their debt.—*S. D. A. Sel. Rep.* 27th Jan. 1825, *vol.* 4, *p.* 15.

Case of distribution of assets decreed by the S. D. A.

263. A decree-holder who has not previously taken out execution of his decree cannot share with other decree-holders, (who have taken out process of attachment) in the proceeds of the sale of the debtor's property.—*Rep. Sum. Cases*, 27th Dec. 1842, *p.* 43.

A decree-holder cannot share with the others who has not taken out execution of the decree.

264. In the case of a joint decree without specification of the sums payable to each of the plaintiffs, payment of the portions of the other decree-holders by one of them who has

The payment of the portions of other decree-holders by one

who has realized the whole property, cannot be summarily enforced.—*Rep. Sum. Cases, 22d Marsh 1841, p. 4.*

One of the heirs of a creditor having realized the amount of a decree, another heir cannot summarily recover his portion.

265. One of the heirs of a judgment creditor having realized the amount of the decree, held that another heir cannot summarily recover his portion of the debt from the party to whom payment has been made : the remedy is by a regular action.—*Rep. Sum. Cases, 11th May 1841, p. 9.*

Case in which one decree-holder has a preferable claim.

266. In the case of lands sold to satisfy a decree for rent due on their account, the decree-holder has a preferable claim to the proceeds of sale.—*Rep. Sum. Cases, 1st Sept. 1846, p. 84.*

## SECTION XV.

### *Execution of Decrees by Moonsiffs, Sudder Ameens and Principal Sudder Ameens.*

Decrees passed by the P. S. A., how to be executed.

267. Decrees passed in the Courts of the Principal Sudder Ameens shall be executed by those courts under the general rules prescribed for the execution of decrees passed by the zillah and city Judges. Provided however, that in such cases an appeal from the orders of the Principal Sudder Ameens shall lie, in the first instance, to the zillah and city Judges, and specially to the Sudder dewanny adawlut, [that is, in suits under 5000 rupees.]—*Reg. 5, 1831, Sect. 22.*

*The rules in Circular order, 22d April. 1842, Nos 4, 5, 6, 7, 8, 9, pages 729 and 730, apply to petitions for the execution of decrees presented to the Native courts.*

Modifies sec 22, reg 5, 1831.

Decrees passed on appeal in the courts of Judges or P. S. A. shall be executed by the court in which the original decree was passed, &c. In appeal from order of moonsiffs or S. A., the decree of zillah or city judge to be final.

268. And it is hereby enacted, in modification of Section 22, Regulation 5 of 1831, that decrees passed in the courts of the Judges or Principal Sudder Ameens, in cases of appeal from the decisions of the Sudder Ameens or Moonsiffs, shall be executed by the courts in which the original decisions were passed, under the general rules prescribed for the execution of decrees passed by those courts—applications for the execution of such decrees shall be presented, together with a certified copy of the decree of the Judge or Principal Sudder Ameen to the Court of original jurisdiction. In appeals from the orders of the Moonsiffs or Sudder Ameen in such cases, the decision of the zillah or city Judge shall be final.—*Act VI. 1843, Sect. 5.*

All cases of execution of decrees now pending, will be immediately transferred to the uncov judges for prosecution and adjustment.

269. It having been enacted, by Section 5, Act VI. of 1843, that “decrees passed in the courts of the Judges or Principal Sudder Ameens in cases of appeal from the decisions of Sudder Ameens or Moonsiffs, shall be executed by the courts in which the original decisions were passed,” and that “applications for the execution of such decrees shall be presented to the Court of original jurisdiction,” the Courts of Sudder dewanny adawlut at Calcutta and Allahabad are pleased to direct that all cases of decrees of the nature above described, which may now be pending in the courts of the Judges or Principal Sudder Ameens be immediately transferred to the Courts of first instance, respectively, for prosecution and eventual adjustment.—*Civ. Ord. 26th May 1843.*

S. A. and moonsiffs competent to execute their own decrees.

270. Section 11. Regulation 5, 1831, is hereby repealed. The rule contained in Section 22, Regulation 5, 1831, authorizing the Principal Sudder Ameens to execute their

own decrees, is declared applicable to all Sudder Ameens and Moonsiffs who may be appointed under that Regulation. Provided, however that the rule in question as regards all the officers above named, shall not be considered to warrant their issuing any order on their own authority for the confinement of a defendant in execution of civil process. Where such order may be requisite, the officer by whose authority the party may have been apprehended shall forward him, together with the subsistence money lodged for his detention, to the zillah or city Judge, who, unless he see reason to the contrary, shall direct his commitment to jail by means of his own officers. In appeals from the orders of the Moonsiff or Sudder Ameen in such cases, the decision of the zillah or city Judge shall be final.—*Reg. 7, 1832, Sect. 7.*

*Proviso.*

The order of the judge on appeals from the moonsiffs and S. A., final

271. The Court are of opinion that petitions presented to Moonsiffs under Section 7, Regulation 7, 1832, for the execution of their decrees, as well as vakalatnamahs filed in cases before them, should be received on plain paper.—*Con. 798, Cal. C. 14th June, West. C. 19th July 1833.*

Petitions to moonsiffs for execution of decrees will be received on plain paper.

272. Moonsiffs may be employed in giving possession in execution of their own decrees of all property not being land paying revenue to Government. They are also competent under Section 51, Regulation 23, 1814, with the authority of the Judge to give possession of land paying revenue to Government, in execution of any decree which may not have been passed by the Moonsiffs themselves. [See Section 7, Regulation 7, 1832; also Construction 962, page 735.]—*Con. 701, 6th July 1832.*

What property in execution of decrees moonsiffs may, and may not, give possession of.

273. Held on a reference from the Judge of Allahabad, that parties, objecting to the sale or transfer of property in execution of decrees, may petition the Moonsiff's courts on plain paper.—*Con. 1278, West. C. 5th, Cal. C. 26th June 1840.*

Parties objecting to the sale of property in execution of decrees may petition the moonsiff on plain paper.

274. The Court are of opinion that Moonsiffs, in common with the other judicial officers are competent to try the fact of possession of lakhuraj land attached by them in execution of their decrees.—*Con. 798, Cal. C. 14th June, West. C. 19th July 1833.*

Moonsiff may try the fact of possession of lakhuraj lands attached by him in execution of his decrees.

275. On a reference from the Judge of Beerbhoon, it was held by the two Sudder Courts concurrently, that Section 5, Regulation 5, 1831, does not restrict Moonsiffs from taking cognizance of claims to lakhuraj lands attached in execution of their own decrees.—*Con. 1054, Cal. C. 14th Oct., West. C. 4th Nov. 1836.*

*Idem.*

276. Held that Act I. of 1839 does not deprive Moonsiffs of the power of selling property in satisfaction of decrees passed by themselves, in regular suits for recovery of arrears of rent.—*Con. 1219, Cal. C. 31st May, West. C. 21st June 1839.*

Moonsiffs may sell property in satisfaction of decrees passed by them in regular suits for rent.

277. A Moonsiff may depute an officer to sell property in execution of his own decree, but not when directed by a superior authority to perform that duty.—*Con. 1050, West. C. 2d, Cal. C. 30th Sept. 1836.*

When a moonsiff may depute an officer to sell property in execution of decrees.

278. Moonsiffs are not entitled to receive commission on sales conducted in execution of their own decrees; but only on those which they may hold in execution of the decrees of other courts.—*Con. 861, West. C. 7th, Cal. C. 28th Feb. 1834.*

When moonsiffs are entitled to a commission on sales conducted in execution of decrees.

Collector cannot issue a perwannah to a moonsiff to sell personal property and houses attached for arrears of the public revenue

279. I am directed to acknowledge the receipt of your letter of the 6th instant, No. 380. The Court, understanding your question to be whether a Collector can without application to the Judge, issue a perwannah to a Moonsiff to sell personal property and houses attached by his nazir, for arrears of public revenue, direct me to communicate their opinion that he is not competent to do so.—*Con. 918, Cal. C. 28th Nov., West. C. 26th Dec. 1834.*

The execution of moonsiffs' decrees must proceed, notwithstanding an appeal, unless the appellate court stays execution.

280. The decrees of *Moonsiffs* must be executed in the same manner as those of other courts, viz. the execution must be proceeded on by the *Moonsiff* notwithstanding an appeal having been preferred from the decree, unless orders should have been issued by the appellate court for staying the same. The mere fact of having preferred an appeal is not to be considered to entitle the appellant, as a matter of course, to a suspension of execution.—*Cir. Ord. Cal. and West. C. 6th Nov. 1835.*

Idem

281. I am instructed further to remind you that the Circular order, No. 157, dated 6th November, 1835, which is equally applicable in principle to the courts of the Native Judges of every grade, has made full provision on the subject of the execution of decrees, in the absence of an order from the appellate court to stay such execution; and a proper observance of the rule contained in it is sufficient to prevent any undue advantage being taken by an appellant of delay in the hearing of his petition of appeal. [*Vide also No. 11 of this Chapter*].—*Cir. Ord. Cal. and West. C. 23d Aug. 1839, par. 3.*

P S A, S A. and M., may receive and act on applications for executing decrees, without reference to the judge

282. Adverting to the terms of Section 22, Regulation 5, 1831, viz that "decrees passed in the courts of Principal Sudder Ameens shall be executed by those courts, under the general rules prescribed for the execution of decrees passed by the zillah and city Judges," the Court are of opinion that Principal Sudder Ameens and Sudder Ameens and Moonsiffs to whom the power is extended by Section 7, Regulation 7, 1832, are competent to receive and act upon applications for execution of decrees of their respective courts without reference from the Judge, under the restriction laid down in Section 7, Regulation 7, 1832.—*Cir. Ord. West. C. 26th July, Cal. C. 1st Nov. 1833, par. 6.*

The judge will not interfere in the execution of decrees of S A. and moonsiffs, unless in appeal from the orders passed thereon

283. The Sudder Ameens and Moonsiffs being now competent under Section 7, Regulation 7, 1832, to execute their own decrees, the Court consider it highly desirable that this duty should, as far as possible, be left entirely to them. They accordingly direct me to request that you will not, except in cases which you may think proper for special reasons to execute yourself, interfere in the execution of decrees of Sudder Ameens or Moonsiffs, unless in appeal from the orders passed thereon. They observe that the orders passed by you in appeal from the orders of the lower courts in such cases are final; but that if you take them up in the first instance, the person dissatisfied with your order must come to this Court to appeal, and the time of this Court will be unnecessarily occupied with matters of comparatively trifling moment.—*Cir. Ord. Cal. and West. C. 6th Sept. 1833.*

The judge cannot of his own authority transfer to the P S A, applications for the execution of moonsiffs' decrees. They will be executed by the moonsiffs themselves

284. Held, that as by Section 7, Regulation 7 of 1832, the rule regarding the execution, by Principal Sudder Ameens, of their own decrees, contained in Section 22, Regulation 5, 1831, is declared applicable to all Sudder Ameens and Moonsiffs who may be appointed under the latter Regulation, and as the first named section unqualifiedly declares that decrees passed in the courts of Principal Sudder Ameens "shall be executed" by those courts, without any reservation or exception, a civil Judge is not competent to transfer, of his own authority, to the

Principal Sudder Ameen, applications for the execution of Moonsiffs' decrees, (such Moonsiffs having been appointed, under the provisions of Regulation 5, 1831,) and that all decrees passed by Moonsiffs must, under the above law, be enforced by those officers, except under such circumstances as would have precluded them by law from themselves hearing and determining a regular suit.—*Con. 1223, West. C. 7th June, Cal. C. 12th July 1839.*

285. The following rules, relating to the execution of decrees under Act IV. 1846, passed with the sanction of the Supreme Government, are published for general information. The district Judges are requested to communicate to the Moonsiffs the purport of the annexed extract, (paragraph 6.) of the orders of the Supreme Government, No. 469, dated 4th instant :  
 "The tulubanaah for peadahs and all costs of process are in the first instance advanced by the decree-holder, and finally deducted out of the proceeds of the sale ; and this is the proper course. The reports to the Judges from the Moonsiff's courts, should be sent as far as possible by the public dawks : if peadahs are required, they must be paid at the Judge's court, and charged in contingent bills."—*Cir. Ord. 17th July 1846.*

Tulubanaah for all objects must be advanced by the decree-holder, and in the end deducted from the proceeds of sale.

How the reports from the moonsiff's courts are to be sent to the judges

286. All orders passed by the Principal Sudder Ameens in execution of their own decrees, in cases referred to them under the provisions of Sections 1 and 4, Act XXV. of 1837, must, in the opinion of the Court, follow the same law of appeal as the decrees themselves, and are consequently appealable directly to the Sudder dewanny adawlut.—*Cir. Ord. Cal. and West. C. 5th June 1838, par. 2.*

An appeal lies to the S. D. A. on all orders passed by the P. S. A. in execution of their own decrees, above the value of 5,000 Rs.

287. With the records of regular suits the Moonsiffs, Sudder Ameen, and Principal Sudder Ameen, will also transmit, for deposit, the records of all cases of execution of decrees and other miscellaneous cases that may have been disposed of in the preceding month, with exception to cases of enforcement of decrees, struck off the file in that period, in which an application may have been made, to sue out execution anew, prior to the date of transmission, in which event they will send in lieu of the record copies of the order striking the case off the file, of the petition for revival, and of the proceeding thereon.—*Cir. Ord. Cal. and West. C. 20th Sept. 1839, par. 10.*

What records of cases of execution of decrees, the uncov. judges will transmit for deposit to the zillah court

## SECTION XVI.

### *Custody and Payment of Money received by Moonsiff's in execution of Decrees.*

288. The Moonsiffs shall keep an account of receipts and disbursements of money on account of execution of decrees in the form annexed. This account shall be entered in a book containing the best and strongest paper procurable in the vicinity, and properly bound. Before commencing their entries in any new book, the Moonsiff shall transmit the same to the Judge of his district, having numbered each page in the Persian language. The Judge will certify the number of pages in each book or register, and return the same to the Moonsiff. Registers of deposit which have been completed should be transmitted in original to the Judge of the zillah, who will retain them among the records of his office.—*Cir. Ord. Cal. and West. C. 5th Feb. 1833, par. 2.*

Book in which the moonsiffs will keep an account of receipt and disbursements of money, on account of execution of decrees

289. Whatever sum of money is paid into the Moonsiff's court should, if possible, be immediately delivered by him to the person entitled to receive it. If that person, or his authorized agent, is not present, it should be transmitted, through the officers of the nearest

How the money should be disposed of, and what accounts are to be transmitted for the inspection of the judges

thannah establishment, to the Judge or the zillah. There appears to be no necessity for a Moonsiff's retaining such sums paid into his court for any considerable period. The account should be closed at the conclusion of each month, and an extract from the register, including the entries and disbursements for the past month, transmitted for inspection and record in the Judge's office. The Judge should examine these extracts and note any irregularity observable, calling on the Moonsiff for explanation when it may appear necessary.—*Civ. Ord. Cal. and West. C. 5th Feb. 1833, par. 3.*

The decree-holder's application for the payment of the money should be made to the moonsiff, who will transmit it to the judge.

290 With regard to the Moonsiff, who hold their cutcherries at the same station as that of the Judge, or within a few miles of it, no alteration in the present practice would appear necessary, except that the decree-holder's application for the payment of the money should be made direct to the Moonsiff, who would apply to the Judge for the transmission of the same to his court, and thus obviate the necessity of any application on the part of the decree-holder to the Judge's court.—*Civ. Ord. Cal. and West. C. 22d March 1839, par. 2.*

## SECTION XVII

### *Confinement of the Person in execution of Decrees by Zillah Courts.*

Decree of the court how to be executed

291 The court is then to cause the decree to be executed,—by the attachment of his person or, where it may be necessary, both by the sale of his property and effects, and the attachment of his person.—*Reg. 4, 1793, Sect. 7—Benares Reg. 8, 1795, Sect. 2.—Civ. Ord. and Comp. Proc. Reg. 3, 1803, Sect. 9.*

In the first instance the process should be executed on the property of the debtor and his surety

292 An application is required for the confinement of a party under civil process, and in the first instance, after demand made, the process should be executed upon the property of the person from whom the amount is due, and the property of his surety.—*Con. 21, 25th July 1806.*

Case in which a civil prisoner may be confined in fetters

293 A civil prisoner cannot be confined in fetters, unless he be suffering under a criminal sentence for having broken jail, in other words, fetters cannot be imposed on a civil prisoner merely to insure his safe detention in jail.—*Con. 624, 25th Feb. 1831.*

A mere arrest, without commitment to jail, does not bar subsequent arrest

294 A mere arrest, without commitment to jail, is no bar under Section 3, Regulation 6, 1830, to the subsequent arrest and imprisonment of a judgment debtor.—*Rep. Sum. Cases, 21st March 1842, p. 25.*

The imprisonment of the debtor against the will of the creditor, and his release under sec. 3, reg. 6, 1830, does not bar his arrest by the creditor

295 The imprisonment of a debtor by the Civil court against the will of his creditor, and his subsequent release in default of deposit of diet money, is no bar, under Section 3, Regulation 6, 1830, to the issue of process of arrest against the debtor on the motion of the creditor.—*Rep. Sum. Cases, 16th Jan. 1843, p. 10.*

The civil court cannot demand from the magistrate delivery on civil process of the person of a prisoner after the expiry of his confinement in jail

296 Held, on a reference from the Judge of Mymensingh, that the Civil courts cannot require the Magistrate to deliver up, after the expiration of his term of imprisonment, a prisoner against whom a process had been taken out while yet in confinement, and that the process should issue, on the release of the prisoner, according to the established form.—*Con. 1276, Cal. C. 20th March, West. C. 24th April 1840.*

297. The only authority, however, possessed by the Civil courts under the Regulations of releasing a prisoner, confined in execution of a decree of court, is in cases coming under the provisions of Section 11, Regulation 2 of 1806, where the insolvency of the prisoner may be clearly established in the mode prescribed in that enactment, and the Court are therefore of opinion, that it is not competent to a Judge to liberate a civil prisoner solely on the ground stated in Mr. Morrison's letter, [that is, on the ground of illness,] unless with the consent of the party at whose instance he was confined.—*Con. 1114, Cal and West. C. 24th Nov. 1837*

The judge cannot without the consent of the creditor release a debtor, solely on the plea of illness, or on any other ground than the insolvency.

298. The Court having had before them some of the statements (No 9, required by the Circular order of the 6th April last,) of civil prisoners confined in the several jails on the 30th June last, are of opinion, that a brief explanation of the cause of detention should be given when any prisoner has been in confinement one year.—*Con. Ord 13th Sept 1833*

When a prisoner has been in jail a year, a brief explanation of the cause should be given.

299. With reference to your letter of the 10th March last, on the subject of the difference of opinion existing between yourself and the officiating Magistrate of Bandra, as to the extent of that officer's jurisdiction over prisoners confined in the Dewanny Jail under civil process, I am directed to acquaint you that under the provisions of Regulation 3 of 1820, you [that is, the Zillah Judge,] are vested with no legal right to be considered as the medium of communication on the part of the Magistrate with such prisoners.—*Con. 1021, Cal. and West. C. 8th July 1836, par. 1.*

The judge is not the medium of communication with civil prisoners on the part of the magistrate.

300. At the same time the Court direct me to observe that under Section 4 of the foregoing enactment, you are fully at liberty to communicate with the prisoners in question whenever you may have occasion to do so, without reference to the Magistrate.—*Ibid. par. 2.*

The civil judge may communicate with civil prisoners without reference to the magistrate.

301. Prisoners confined under civil process may petition on plain paper, only in matters relating to their treatment in jail.—*Con. 554 28th May 1830*

In such cases civil prisoners may petition on plain paper.

302. If a civil prisoner, sentenced to a reduction of his allowances for two months for breach of the prison rules, satisfy his creditor, with a view to obtain his release the Magistrate cannot commute the punishment so awarded to fine and imprisonment, but the prisoner, on payment of the demand against him, must be immediately released.—*Con. 136, 14th July 1826*

If a civil prisoner, sentenced to punishment for breach of the prison rules, satisfy his creditor, he must be released, the magistrate cannot commute his punishment to fine and imprisonment.

303. A prisoner confined in jail in execution of a decree may be released, with consent of decree-holder, on bail for his personal appearance, and the surety may be summarily proceeded against on failing to produce the party bailed.—*Rep. Sum Cases, 14th April 1842, p. 27.*

A civil prisoner may be released on bail with the consent of his creditor, his surety is answerable for producing him.

304. The Judge who issued the process of arrest can alone order the release of a prisoner, and not the Judge in whose district he may have been arrested.—*Con. 1000, West. C. 5th Feb., Cal. C. 11th March 1836.*

The judge who ordered the arrest can alone order the release of the prisoner.



## SECTION XVIII.

*Confinement in execution of Decrees by Moonsiffs, Sudder Ameens, and Principal Sudder Ameens.*

S. A. and M. competent to execute their own decrees.

Proviso

The orders of the judge on appeal from the moonsiffs and S. A., final

305. Section 11, Regulation 5, 1831, is hereby repealed. The rule contained in Section 22, Regulation 5, 1831, authorizing the Principal Sudder Ameens to execute their own decrees, is declared applicable to all Sudder Ameens and Moonsiffs who may be appointed under that Regulation. Provided however, that the rule in question as regards all the officers abovenamed, shall not be considered to warrant their issuing any order on their own authority for the confinement of a defendant in execution of civil process. Where such order may be requisite, the officer by whose authority the party may have been apprehended shall forward him, together with the subsistence money lodged for his detention, to the zillah or city Judge, who, unless he see reason to the contrary, shall direct his commitment to jail by means of his own officers. In appeals from the orders of the Moonsiff or Sudder Ameen in such cases, the decision of the zillah or city Judge shall be final. — *Reg. 7, 1832, Sect. 7*

306. I am directed to inform you that in the opinion of the Court the proviso contained in Section 7, Regulation 7, 1832, was intended to apply to Principal Sudder Ameens and Moonsiffs, and that consequently the former are not competent to confine a defendant without the sanction of the Judge.—*Con. 947, West. C. 1st, Cal. C. 22d May 1835.*

In suits above 5000 rs., the P. S. A. may order the confinement of the prisoner. The judge will direct the civil jailor to receive or release him, on the requisition of the P. S. A.

307. A recent instance having occurred in which on a Principal Sudder Ameen, in execution of a decree of his court above 5000 rupees in amount, sending the defendant with a requisition of his confinement in jail under the provisions of Section 7, Regulation 7, 1832, to the Judge's court, the latter officer sent the defendant back with an opinion recorded that in suits exceeding 5000 rupees he possessed no jurisdiction, I am directed to communicate to you the following rule. It has been ruled by a majority of the Allahabad and Calcutta Courts that by Act XXV, 1837, the Principal Sudder Ameen has full power to pass any order connected with the case before him that the Judge himself could pass, subject to an appeal to the Sudder dewanny adawlat: he is therefore competent to order the imprisonment of a defendant in suits above rupees 5000, and it is not necessary that the Judge should have jurisdiction in the case to enable him to direct the civil jailor to take charge of the defendant or to release him on the requisition of the Principal Sudder Ameen, the Judge's duty, in such case, being merely to issue the warrant, the jailor to receive (or release) the prisoner in the same way that he was required to give lodgment to prisoners under revenue process, before the issue of Circular order, No. 76 of the 4th January, 1833, which empowers Collectors to issue their own orders for the imprisonment and release of their own defaulting assamees.—*Cir. Ord. 18th Sept. 1840.*

In cases above 5000 rs., the mode of proceeding laid down in reg. 7, 1832, sec. 7, will be followed when prisoners are confined by the P. S. A.

308. The mode of proceeding laid down in Section 7, Regulation 7, 1832, is to be followed in the case of defendants ordered into confinement by the Principal Sudder Ameens in suits exceeding 5000 rupees.—*Con. 1284, Cal. C. 7th Aug., West. C. 7th Sept 1840.*

309. I am directed by the Court to request that you will lay before the Honorable the Vice President in Council the accompanying copy of a letter from the Judge of zillah Dacca representing the inconvenience and danger attendant on a strict observance of the rule contained in Section 7, Regulation 7, 1832, in the case of persons arrested in execution of decrees under the orders of the Principal Sudder Ameens and Moonsiffs of that part of the district which is under the Joint Magistrate of Furreedpore. The Court are of opinion that, except in cases in which the debtors might wish to be sent to Dacca, if the Principal Sudder Ameen and Moonsiffs were required, on forwarding any person to the Joint Magistrate at Furreedpore for confinement in the civil jail, at the same time to report the circumstances to the Judge at Dacca, who would confirm or cancel the order, as might appear just and proper, the form required by the Regulation would be sufficiently observed; and they propose, should Government see no objection, to instruct the Judge of Dacca accordingly.—The Vice President in Council sees no objection to the instructions which the Court propose to issue on this subject—*Ctr. Ord. Cal. and West. C. 21st March 1834.*

Particular instructions regarding the confinement of civil prisoners by the P. S. A. and moonsiff of Furreedpore.

*This rule will of course apply to other courts similarly situated.*

## SECTION XIX.

### *Subsistence Money of Persons confined in the Civil Jail*

310 In modification of such part of Section 8, Regulation 4, 1793, extended to Benares by Section 2, Regulation 8, 1795, and re-enacted for the Ceded Provinces by Section 10, Regulation 3, 1803, or of any other Regulation in force, relating to the subsistence allowance to be paid to persons confined in execution of decrees, or other civil process, it is hereby declared, that no process of arrest shall hereafter issue from a Civil court, unless the party applying for the same and entitled thereto, shall deposit in court (independent of the charge for executing the process) a sum sufficient to provide for the subsistence of the individual against whom the process may issue, for a period of thirty days, from the date of his commitment to jail, in execution thereof. On the expiration of thirty days after such commitment, a further deposit shall be made in advance for the next ensuing thirty days, and so on, till the defendant's discharge.—*Reg. 6, 1830, Sect. 2.*

Part of sec 8, reg. 4, 1793, (extended to Benares by sec. 2, reg 8, 1795, and re-enacted for ceded provinces by sec 10, reg 3, 1803, and other provinces,) modified. Previously to the arrest of a debtor in satisfaction of a decree, a sum for the subsistence of the debtor for 30 days must be deposited.

On the expiration of 30 days, after the commitment of the debtor to jail, a further deposit of 30 days shall be made

311. The amount of deposit shall be fixed by the Judge at the time of issuing the process of arrest—subject to future revision on sufficient grounds shewn, and shall be regulated according to the rules heretofore in force—that is, the allowance is not to exceed four annas nor to be less than one anna per diem, consideration being had to the rank and situation in life of the defendant, and the circumstances of the plaintiff. Provided however, that if any special circumstances should exist for increasing the rate beyond four annas, it shall be competent to the Sudder dewanny adawlut, on a report from the Judge, or other sufficient information before them, to order such increase as may appear to that court, to be just and proper, not exceeding in any instance one rupee per diem.—*Ibid.*

The amount of deposit to be fixed by the judge, not less than one, or more than four annas per diem

Except under special circumstances.

The judge may settle the amount of subsistence money of defaulters confined at the suit of collector.

The judge cannot reduce the subsistence money of a prisoner merely on the application of the creditor.

Deposit to whom to be paid.

In default of the payment of the deposit on or before the day on which it may become due, the debtor shall be released.

Debtor released in default of payment of deposit not liable to a second arrest on the same matter and at the instance of the same party.

Except in certain provided

A is confined at the instance of B who is a debtor of C. If B neglects to pay the subsistence money of A, C may deposit it and detain him.

Diet money for a debtor, confined for several decrees obtained by one creditor, need not be deposited in each case.

When a debtor was arrested and kept in custody 7 days, and released because the diet money was not deposited, this did not bar his further arrest, because he had not been in jail.

Any future alterations in the rules regarding the allowance to debtors in jail to be made by the S. D. A., subject to the approval of govt.

312. The Judge is competent to settle the amount of subsistence money of defaulters confined at the suit of the Collector.—*Con. 77, 31st Jan. 1811.*

313. Held, that the zillah Judge was not authorized in reducing the subsistence allowance of a prisoner confined in the zillah jail, merely on the application of the creditor, and without sufficient cause being shown.—*Rep. Sum. Cases, 15th Jan. 1841, p. 1.*

314. The allowance required under the foregoing rules, is to be made payable as heretofore to the nazir of the court, who is to give monthly receipts for it to the plaintiff, dated on the day on which the money may be paid. If the plaintiff shall neglect or refuse to pay the prescribed allowance on or before the day on which it may become due, the nazir is immediately to report the same in writing, under his signature, to the Judge, who is forthwith to order the defendant's discharge, and such defendant shall not again be liable to personal arrest and confinement on the same matter, at the instance of the same party, unless it be proved to the satisfaction of the court, that he has been guilty of dishonest conduct in the fraudulent concealment, or transfer, of any property that would otherwise have been available for the satisfaction of the decree or other demand on account of which he may have been originally confined.—*Reg. 6, 1830, Sect. 3.*

315. A. is confined in execution of a decree at the instance of B, who is, under a decree of court, a debtor of C. Held that, on B's neglecting to deposit the subsistence money for A, C. may deposit it, and detain A. in custody to enforce payment.—*Rep. Sum. Cases, 15th June 1841, p. 11.*

316. Diet allowance for a debtor, confined on account of several decrees obtained against him by one creditor, need not be deposited in each case.—*Rep. Sum. Cases, 12th Aug. 1845, p. 70.*

317. Section 3 of Regulation 6, 1830, states, "that if the plaintiff in any case shall neglect to pay the diet allowance for any defendant on or before the day on which it may become due, such defendant shall forthwith be discharged, and shall not again be liable to personal arrest and confinement in the same matter, &c. &c." Now in the case under report, it appears that Mirtunjoy was once before (in July, 1825,) arrested and brought in this very matter and kept under charge of the nazir's chuprassies for seven days, when (no diet allowance being paid) he was released; and what I wish to know is, whether, under these circumstances, the said Mirtunjoy can again be arrested and confined for the same debt, or in other words, whether *temporary confinement under charge of peadaks, &c.* is to be considered as a bar to all further *personal arrest* towards defendants in all such cases.—I am directed by the Court to inform you that under the circumstances stated, Mirtunjoy, never having before been confined in jail on account of the demand against him, is liable to be arrested and committed to jail under the decree of the late Calcutta Court of appeal.—*Con. 1090, Cal. C. 19th May, West. C. 2d June 1837, par. 2.*

318. In the event of any future alterations becoming necessary in the rules relating to the subsistence allowance of debtors confined in the civil jails, it shall be competent to the Court of Sudder dewanny adawlut to direct the same, subject to the approval of the Governor General in Council, without the necessity of a new Regulation being passed for that purpose.—*Reg. 6, 1830, Sect. 5.*

319. I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of your letter of the 10th instant, requesting the Court's opinion as to whether the terms of Section 2, Regulation 6, 1830, preclude the issue of a *dustuk*, for the arrest of a defaulter, under Regulation 7, 1799, until subsistence money for thirty days shall have been paid into the *nazir's* hands. In reply, I am directed by the Court to observe, that the object of the Regulation in question being to modify the provisions of Section 8, Regulation 4, 1793, so as to prevent debtors confined in jails suffering additional hardships from the failure of their creditors to furnish them with subsistence, the terms of the section quoted by you cannot be considered as barring the issue of a *dustuk* against a defaulter, under Regulation 7, 1799, though no defaulter can be committed to jail, until the subsistence money for thirty days has been deposited.—*Con. 575, 24th Sept. 1830.*

Reg. 6, 1830, sec. 2, does not preclude the issue of a *dustuk* for the arrest of a defaulter under reg. 7, 1799, till subsistence money has been deposited.

But no defaulter can be confined in jail till 30 days' diet money has been deposited

320. Plaintiffs are not to be required to pay any allowance to defendants who may be committed to custody for disobedience to an order of the court.—*Reg. 4, 1793, Sect. 8. —Benares Reg. 8, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 3, 1803, Sect. 10.*

Plaintiffs not to pay any allowance to defendants confined for disobedience to the orders of the court.

321. A question having arisen, whether the amount paid for the subsistence of persons in confinement, under judgments of the Civil courts, as prescribed by Section 8, Regulation 4, 1793, and Section 10, Regulation 3, 1803, is to be repaid by the party confined, on his release, it is hereby explained that such repayment is to be made, in common with the reimbursement of other costs of suit and process, when any property may be forthcoming from which the amount can be levied. But when no property can be pointed out for the reimbursement of the subsistence money paid to prisoners they shall not be detained in confinement for the repayment of such money only —*Reg. 2, 1806, Sect. 12.*

Explanation that the amount paid for the subsistence of persons in confinement on the judgments of the civil courts, is to be reimbursed in common with other costs of suit when there may be any property forthcoming.

But persons are not to be detained for the reimbursement of the subsistence money only, when no property can be pointed out.

The diet money of prisoners confined under civil process is payable by the party at whose instance they are confined

322. On a reference from the Patna Provincial court, to ascertain by whom the allowance for subsistence to prisoners is payable, when parties are confined in execution of process for *rakeel's* fees, or the stamp duty on paper used for decrees, the Court of Sudder dewanny adawlut informed them that, in pursuance of the spirit and intention of Section 8, Regulation 4, 1793, the subsistence of prisoners confined under civil process, is payable by the persons at whose instance they are confined. That, therefore, in the cases stated, it is payable by the *rakeels*, if the party be confined for their fees, and at their instance, or by Government, if the confinement be ordered on account of the stamp duty, or other item payable to Government. That, however, in all cases, an application for the confinement of the party under civil process is requisite, and that in the first instance, after demand of the amount due, such process should be executed upon the property of the party from whom the amount is due, and the property of his securities.—*Con. 21, 25th June 1806.*

323. The Court of Sudder dewanny adawlut, having been referred to, in more than one instance for the purpose of ascertaining in what manner the usual allowance for the subsistence of prisoners confined in the jails of the Civil courts should be provided for, persons so confined at the instance of a Collector, or other public officer on the part of Government, whether for arrears of revenue, or on any other account, sanctioned by the Regulations; I am directed to acquaint you, for your information and guidance, that the Court are of opinion, the spirit and substance of Section 8, Regulation 4, 1793, (though not the exact mode of proceeding therein prescribed with respect to individual plaintiffs,) are applicable to all such cases, and that the

Subsistence money of prisoners confined by the collector or other officer for arrears of revenue, or on any other account.

Collector, or other public officer who may have caused the confinement of the prisoner in each instance, should be called upon for the due payment of such rate of allowance as the Judge by whom the prisoner is confined may consider it proper to fix, within the discretion vested in him by the rule above mentioned.—*Cir. Ord.* 20th April 1818.

The provisions of reg 6, 1830, regarding the deposit of diet money of prisoners apply to the officers of govt as well as to private individuals

324. In reply to your letter of the 1st instant, I am directed by the Court to inform you that the provisions of Regulation 6, 1830, regarding the deposit of the subsistence money of persons confined in the civil jails, apply to the officers of Government as well as to private individuals — *Con* 647, 15th July 1831.

## SECTION XX.

### *Liquidation of the Amount of the Decree or the Proceeds of Estates by Insolvents.*

Declaration that the civil courts are restricted from granting indulgence of time, when there may be property sufficient and liable to satisfy the judgment, unless the party in whose favor the judgment is passed, shall consent to waive his right of the immediate enforcement of the judgment, or unless (short postponement of the sale of the property shall appear equitable

325 Doubts having been entertained whether any of the established City courts are competent to provide, in their decrees, for the payment by instalments of money adjudged by them, or to make such provision, in cases of indulgence, at any period after passing their decrees, it is hereby declared, that the Civil courts in general are restricted from granting indulgence of time, in the satisfaction of a final judgment, when property, from which such judgment can be satisfied, (whether belonging to the party against whom the judgment is given, or to his surety or sureties for the performance of such judgment) may be forthcoming, unless the party in whose favour the decree is passed, shall consent to waive his right of immediate enforcement, under an engagement for gradual payment or otherwise; or unless a short postponement of the sale of property shall under any particular circumstances, appear just and equitable — *Reg* 2, 1806, *Sec* 10.

Provision when no property to satisfy the judgment may be pointed out, and the party against whom the decision is passed or his surety may be willing to engage for the liquidation of the amount due by instalments under sufficient malzummy or hazirzummy, as the one or the other may be tendered or required

326 But when no property may be pointed out from which the judgment can be enforced, and the party against whom it is passed, or his surety, if he have given any, may be willing to engage (under sufficient malzummy or hazirzummy security, as one or the other may be tendered or required,) for the liquidation of the amount due, by instalments, within such period, as the court passing the final decree or entrusted with the execution of it, shall deem reasonable and proper, it shall be competent to the court, by which the final judgment is given, or to a Zillah or City court enforcing the decision of a Native Commissioner, and to any superior court revising the proceedings of an inferior court, to accept the engagement so offered, and to cause execution of the decree in conformity therewith, so long as the conditions of it shall be duly fulfilled.—*Ibid*.

Competency of the courts to receive such engagements, declared.

In such cases, if the person delivering the engagement shall have been arrested, he is to be immediately released, & not again arrested in execution of the same judgment, except on failure to perform his engagement. Nor shall any interest be chargeable in such instances beyond what the engagement provides for

327. In such cases, if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately discharged; and shall not be liable to further arrest in execution of the judgment to which such engagement may refer, except on failure to perform the terms of it; nor shall any interest be chargeable in such instances beyond what may be provided for in the engagement.—*Ibid*.

328. In answer to a query from the Judge of zillah Jungle Mehals, "Whether in the case of a party, at whose suit a debtor may be confined, having consented to discharge such debtor from confinement, on his executing an agreement to pay the amount of the debt by instalments, and such engagement having been acknowledged and accepted by the parties, and attested by their signatures, in presence of the Judge ; on failure of the performance of the conditions of such engagement, any process can be issued by the court for enforcing its payment; or, if it be necessary, that a new suit be instituted by the plaintiff for the recovery of any claim which may be due under such agreement." the Court of Sudder dewanny adawlut determined, on the 7th December, 1808, that the spirit and intention of Section 10, Regulation 2, 1806, appear to include the above case, provided the *kusthundy* have been given in execution of a decree, and the enforcement of the decree have been suspended in consequence, but that if any payment under the *kusthundy* be alleged by the party or his surety, he should be allowed to prove the same, if not admitted by the opposite party — *Con. 14, 7th Dec. 1808.*

Course of procedure if a debtor confined in execution, executes an agreement to discharge the debt by instalments.

329. If a defendant make an offer that his lands be attached, in satisfaction of a decree against him, and that the sum due be discharged gradually from the collection of the rents, and if the debtor agree to this arrangement, the court is competent to (must) sanction it, and order the Collector to hold the lands in attachment, to collect the rents, and to pay them into court. — *Con. 752, 1st Feb 1833.*

The judge may, with the consent of parties, instead of selling an estate in execution, cause it to be attached (thru' the collector,) till the debt is realized from the proceeds

## SECTION XXI

### *Relief of Insolvent Debtors.*

330. For the relief of insolvent debtors and their sureties, who may be in confinement for the satisfaction of the decrees of the Civil courts, and may have no means of discharging the amount demandable from them, by instalments or otherwise, the Judges of the Zillah and City courts, the Provincial courts of appeal, and the Court of Sudder dewanny adawlut, are further empowered, on receiving from the person, or persons confined, in such cases, a statement upon oath containing a full and fair disclosure of all property belonging to them, whether in land, money, or effects, or of whatever description; and whether held in their own names, or in the names of any other persons, or jointly with others; to cause enquiry to be made for the purpose of ascertaining the truth of such statement, or the validity of any objections thereto, which may be offered by the party at whose instance the prisoner or prisoners may be in confinement. — *Reg. 2, 1806, Sect. 11.*

The zillah and city civil courts, the provincial courts, & the S. D. A. are empowered to afford relief to insolvent debtors and their sureties on receiving a statement on oath, containing a full disclosure of all property belonging to them.

Enquiry to be made to ascertain the truth of such statements, or the validity of any objections to them.

331. If the result of such enquiry shall satisfy the court, that the statement of property so delivered is true and faithful, and that the persons confined possess no other means of discharging the amount demandable from them, and the property included in the statement, or such part thereof as the court may deem it proper to sell, in satisfaction of the judgment passed, shall be given up for sale; the court, on receiving such surrender of property, may cause it to be sold, in the mode prescribed by the Regulations; and may order the release of the person or persons, in confinement, either with or without hazirzamin security, for his or their appearance when required. — *Ibid.*

If the statements appear true & faithful, and the person in confinement has no other means of paying the amount due, and shall make a surrender of his property, the court after causing it to be sold, may release the debtor with or without security for appearance.

Provided that no debtor or surety in confinement shall be entitled to release, who may appear to have been guilty of a fraudulent concealment of property, or any manifest fraud or misdemeanor.

332. Provided however, that nothing in the section, which is meant to grant relief in cases of real inability and fair dealing only, shall entitle any debtor or surety, confined under the judgment of a Civil court, to be released, without full satisfaction of such judgment, if he shall be guilty of any fraudulent concealment of property; or shall have committed any manifest fraud or misdemeanor, which may appear to the court to render him an improper object of the relief intended for persons acting with good faith; and willing to surrender all the property in their possession for the benefit of their creditors.—*Reg. 2, 1806, Sect. 11.*

Where property was attached by the sheriff of Calcutta, & not sold for three years, no fraud could be imputed.

333. Certain property was under attachment by the Sheriff of Calcutta without being sold for three years. Held that no fraud could therefore be imputed to the owner so as to subject him to arrest, under Section 11, Regulation 2, 1806.—*Rep. Sum Cases, 13th Feb. 1841, p. 56.*

Nor shall the release of the debtor under this section prevent the creditor from bringing to sale any property which may be subsequently possessed by the party released, in full payment of the sum adjudged against him or from causing the party to be again confined on its being proved that he fraudulently concealed any property in his own name, or in that of others at the time of his discharge.

334. Nor shall release from confinement, in any instance, under this section, prevent this creditor from bringing to sale (by application to the court.) in full payment of the sum, adjudged due to him, any property which may be subsequently possessed by the party released; or from causing such party to be again confined until the judgment be fully satisfied, when it may appear, by sufficient proof, that he had fraudulently concealed any property actually belonging to, and known to have been possessed by him, either in his own name, or that of others in his behalf, at the time of his discharge. Provided further, that all proceedings held and orders passed, by the Judges of the Zillah and City courts, under the discretion vested in them by this section, shall on representation of the parties affected thereby to the Provincial courts of appeal, [now the Sudder court] be open to the revision and determination of those courts; and in like manner, all orders passed by the Provincial courts under this section, shall be open to the final decision of the Sudder dewanny adawlut.—*Reg. 2, 1806, Sect. 11.*

Provided further that all orders passed by the civil courts, shall on representation from the party affected, be open to the revision of the provincial courts, & in like manner any orders passed by the latter courts under this section shall be open to the final decision of the S. D. A.

The insolvent rules apply to prisoners in confinement for arrears of rent.

But not to those who are confined under a process in cases where there has been no decree of a civil court.

335. Doubts having been entertained whether the provisions for the relief of insolvent debtors, contained in Regulation 2, 1806, should be considered applicable to the cases of persons in confinement for arrears of rent, I am desired to acquaint you, that, in the opinion of the Court, the rules contained in Section 11, Regulation 2, 1806, extend to all persons in confinement under decrees, regular or summary, of the Civil courts; but not to those in confinement under any process in cases wherein the decree of a Civil court has not been passed. You are accordingly desired to adopt this construction in future, whatever construction may have been heretofore given in your court to the section in question.—*Con. 372, 31st Dec. 1824.*

The insolvent rules apply to all prisoners under confinement under a decree, summary or regular.

336. The Sudder dewanny adawlut have had before them your letter, dated the 8th instant. I am directed to state, that the Court in former instances have held that the terms of Section 11, Regulation 2, 1806, ("in confinement for satisfaction of decrees of the Civil courts,") being general, the benefit of the section might be claimed by all persons in confinement under a decree, regular or summary; but not, where no sentence of the Civil court, regular or summary, had issued.—*Con. 319, 21st July 1820.*

337. In reply to a question submitted by the Judge of the Jungle Mehals, "Whether the provisions contained in Regulation 2, 1806, for the release of insolvent debtors, were to be considered applicable to cases of persons in confinement on account of demands of rent decreed under summary investigation, or whether the operation of those rules in favour of insolvent debtors, was limited to persons confined under decisions of the courts passed on regular suits; the Court gave it as the opinion, on the 22d of May, 1810, that the provisions of rule above quoted for the release of insolvent debtors, were applicable to cases of persons in confinement for arrears of rent under summary decrees—*Con.* 60, 22d May 1810.

The insolvent rules apply to all prisoners under confinement under a decree, summary or regular.

339. The provisions of Section 11, Regulation 2, 1806, for the relief of insolvent debtors are applicable only to persons confined under a *decree* of court whether regular or summary, and not to those confined under judicial process against whom no final decision or award has been passed.—*Con.* 24, 20th Sept. 1806.

Idem

339. A debtor confined in the jail of 24-Purgunnahs, in execution of a decree of the Calcutta Court of Requests, is entitled to the benefit of the rules of Section 11, Regulation 2, 1806, in favour of insolvents.—*Rep. Sum. Cases*, 18th Sept. 1837, p. 15.

A debtor confined in the 24-purgunnah jail for a decree of the court of requests, is entitled to the benefit of the insolvent rules.

340. The provisions of Section 11, Regulation 2, 1806, are intended, as appears from the preamble thereof, solely for the relief of insolvent debtors who may be in confinement; consequently Mr — not being in confinement, cannot be relieved from his present difficulties under that section.—*Con.* 1196, *Cal. and West. C.* 26th Aug. 1836, *par.* 2.

The insolvent rules apply only to debtors who are in confinement.

341. Section 10 of this Regulation however expressly provides, that "when no property shall be pointed out from which the judgment can be enforced and the party against whom it is passed, may be willing to engage for the liquidation of the amount due by instalments, it shall be competent to the court to accept the engagement so offered, and to cause execution of the decree in conformity therewith, as long as the conditions of it shall be duly fulfilled." The previous confinement of the debtor is not necessary in this case; for the section provides that "if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately released"—*Ibid*, *par.* 3.

But when the party against whom the decree has passed, offers to liquidate the debt by instalments, the court may accept the offer, though the debtor is not in confinement.

342. In conclusion I am directed to inform you that under the existing Regulations none of the Civil courts have the power of granting a general release to a debtor, and that the Government and private individuals are on precisely the same footing in regard to the realization of debts from the property of released insolvents; for the private creditor, under Section 11, Regulation 2, 1806, may at any time after the release of the debtor bring to sale any property which may subsequently be found in the possession of the latter.—*Ibid*, *par.* 5.

After the release of a debtor, a creditor may bring to sale any property which may be subsequently found in his possession.

343. In this case, [of Baboo Govind Dass v. Koosager,] the point submitted is, how far there is or is not, a discretion in the Civil courts, as to enlarging imprisoned persons under the rules contained in Section 11, Regulation 2, 1806, regarding insolvent debtors confined in execution of decrees of the Civil courts. The Court are of opinion, that under those rules a debtor is entitled to his release on making what the Civil courts [subject to the control of the Court of appeal] shall deem a fair discovery and surrender of all the property he possesses, without regard to the amount of his debt, or the time he may have been imprisoned under the decree.—*Con.* 308, 19th Nov. 1819, *par.* 2.

A debtor is entitled to his release on making what the court deems a fair discovery and surrender of his property, without regard to the amount of his debt, or the time he has been in jail.

344. The Judge of the 24-Purgunnahs was informed, on the 11th April, 1811, in reply to certain queries put by him, regarding the construction of Section 11, Regulation 2, 1806,

The insolvent rules do not apply to the case of a defaulter in



confinement for arrears of revenue, by a collector, against whom no judgment has passed.

that the Court were of opinion, that Section 11, Regulation 2, 1806, was applicable only to persons in confinement under decisions passed by the Civil courts; and consequently that the provisions of the above section, though applicable to revenue defaulters, as well as other persons, when confined under a judgment of court, had no reference to the case of a defaulter in confinement for arrears of revenue, at the instance of a Collector against whom no judgment had been passed.—*Con. 86, 11th April 1811.*

The insolvent rules are not applicable to abkars confined on the collector's process.

345. To *Abkars*, confined on the process of a Collector under Section 15, Regulation 6, 1800, Section 11, Regulation 2 of 1806, cannot be applicable.—*Con. 95, 12th Dec. 1811.*

Collectors are competent to release debtors confined on summary suits for rent, on their presenting petitions and proving their insolvency

346 Doubts having been entertained as to the authority by whom the relief prescribed by Section 11, Regulation 2 of 1806, is to be afforded to insolvent debtors, confined under summary decrees for rent, I am directed to inform you, that it has been ruled by the Courts of Sudder dewanny adawlut and Government, that, as the whole of the powers, vested in the Judges in regard to summary suits for rent, have been transferred by Regulation 8, 1831, to the Collectors of revenue, those officers are competent to release such debtors, on their presenting petitions and proving their insolvency under the section before cited.—*Clr. Ord. 18th Nov. 1836.*

*Idem*

347. The Collector is competent to release a person confined in execution of a summary decree for rent on proof of insolvency.—*Con. 784. Cal. C. 19th April, West. C. 17th May 1833.*

A pauper plaintiff who on the dismissal of his suit is confined on account of costs is entitled, like other debtors, to the benefit of the insolvent rules.

348. A person who has been admitted to sue as a pauper, and whose suit has been dismissed with costs, is liable to confinement at the instance of the defendant, and on the deposit of the prescribed subsistence money, if he fail to pay the amount adjudged against him by a decree, in like manner with any other suitors, and of course, in common with all insolvent debtors, equally entitled to the benefit of the rules introduced by Section 11, Regulation 2, 1806.—*Con. 110, 3d Sept. 1812, par. 4.*

Should the defendant ultimately be confined only for costs of suit the benefit of the insolvent rules may be granted

349. I am directed to add that in respect of the costs of suit, should the defendants ultimately be confined for these solely, the other parts of the sentence having been got over, the benefit of the insolvent rules may be granted.—*Con. 309, 17th Dec. 1819, par. 5.*

A zillah court executing a decree of the S D A and confining a debtor may release him on proof of insolvency, without referring to that court.

350. I am directed to communicate to you the Court's opinion that when the execution of a decree of the Sudder dewanny adawlut has been entrusted to the zillah Judge, he is competent, without referring the case to the court, to apply the rule contained in Section 11, Regulation 2, 1806, to any defendant who may be confined in execution of the decree.—*Con. 1062, Cal. C. 16th, West. C. 30th Dec. 1836.*

Wilful concealment of bond debts due to an insolvent examined on oath, is punishable as wilful perjury.

351. The Court are of opinion that the wilful concealment of bond debts due to an insolvent debtor, examined on oath under the rules contained in Section 11, Regulation 2, 1806, is punishable on conviction as wilful perjury under Clause 1, Section 13, Regulation 17, 1817.—*Con. 1086, Cal. C. 14th, West. C. 28th April 1837, par. 2.*

Mode in which prisoners confined on the application of the magist. judges may obtain release on proof of insolvency.

352. I am directed by the Court to inform you that in cases of insolvency where individuals have been imprisoned on an application from a Native court, the Judge presiding in such court is evidently the proper person to determine whether or not the debtor ought to be released. The petition should, however, be presented to the European Judge, who may either take the deposition of the prisoner himself, or refer it to the officer presiding in such Native court

for investigation; and if the decision should be for a release, then an application should be made to the Judge for an order on the jailor to that effect, leaving any parties dissatisfied with the decision of the lower court, the option of an appeal.—*Con. 1108, Cal. C. 8th, West. C. 22d Sept. 1837.*

353. I am directed by the Court to transmit to you for your information and guidance, the accompanying copy of the opinion given by the Advocate General, as to the manner in which decrees of the Mofussil courts are affected by an adjudication of insolvency in the Calcutta Insolvent court:—I conceive that all courts, consequently those of the mofussil, within the British territories in the East Indies, are bound by the Act for the relief of insolvent debtors; and that in a cause before them the plaintiff must discontinue his suit, if his claim is admitted in the schedule of the insolvent or disputed as to amount only. This is clear from the Act 9, G. 4, C. 73, S. 41. But the application of the law must depend on the circumstances of each particular case. For example, it is not said, as I believe, whether the two cases mentioned to me are in the schedules of the insolvents or not. And supposing them to be so, I should probably come to a conclusion in the one case different from that in the other. I am not aware of any decisions which have been come to on the subject either by the Court for the relief of insolvent debtors in England or by that in Calcutta. But arguing from analogy to the bankrupt laws, I should say that a mere decree made before the adjudication of insolvency will not authorise the complainant to seize the property of the insolvent, but that he must prove his debt in common with other creditors. Such undoubtedly is the rule in bankruptcy, and I presume in insolvency, in England, when a judgment has been obtained. But execution actually executed is a different thing. And I conceive the party who has executed is entitled to the payment of his debt out of it.—*Cir. Ord. Cal. C. 25th Aug, West. C. 30th Oct. 1837.*

Manner in which decrees of the mofussil courts are affected by an adjudication of insolvency in the Calcutta insolvent court.

354. It is an insufficient reason for the discharge of a debtor from confinement without taking his oath of insolvency, that the creditor cannot point out any property belonging to him.—*Rep. Sum. Cases, 2d Sept 1844, p. 60.*

A debtor is not to be discharged without the oath of insolvency, because the creditor cannot point out any property belonging to him.

355. The Sudder dewanny adawlut ordered the arrest of a debtor, discharged from confinement by the zillah Judge pending the sale of his property —*Rep. Sum Cases, 29th July 1844, p. 60.*

Case in which the S D A ordered the arrest of a debtor discharged from confinement by the zillah judge

## SECTION XXII.

### *Limit of Confinement for Decrees under Sixty-four Rupees.*

356. With a view to prevent the protracted imprisonment of persons confined in execution of decrees for sums of inconsiderable amount, it is hereby provided in addition to the rule contained in Section 11, Regulation 2, 1806, that no person from and after the 1st February, 1815, shall be liable to personal confinement, in satisfaction of a decree for any sum, not exceeding sixty-four seer rupees, beyond a period of six months; but that at the expiration of that period, any person so confined shall be entitled to be released; but any property which may belong to such person shall at all times, either during his imprisonment, or subsequently to his release, be liable to attachment and sale for the purpose of realizing the amount of the judgment, or such part thereof as may remain due.—*Reg. 23, 1814, Sect. 45, Cl. 7.*

No person to be imprisoned in execution of a decree not exceeding 64 sa rs. for a longer period than six months

But any property belonging to such person liable to be sold in execution of the judgment.

The above regulation only fixes a maximum of time during which a debtor can be confined for a sum not exceeding 64 rs.

The rule in reg. 23, 1814, sec. 45, cl. 7, does not apply to a person confined for arrears of abkaree tax due to govt

357. The provisions of Clause 7, Section 45, Regulation 23, 1814, make no alteration in the above rules, [namely in the rules of Regulation 2, 1806, Section 11,] except in fixing a maximum of time, during which a debtor shall be subjected to imprisonment in satisfaction of a decree for a sum not exceeding sixty-four rupees.—*Con. 308, 19th Nov. 1819, par. 2.*

358. The rule contained in Clause 7, Section 45, Regulation 23, 1814, cannot be held applicable to the cases of individuals in confinement, at the requisition of the Collector; it being provided for by that clause, "that no person, from and after the 1st February, 1815, shall be liable to personal confinement in satisfaction of a decree for any sum not exceeding sixty-four rupees, beyond a period of six months."—*Con. 302, 28th May 1819.*

*The rule in Regulation 23, 1814, Section 45, Clause 7, has never been declared applicable to decrees in summary suits.*

The execution of a *kistbundy* for a greater sum than 64 rs. including costs & interest, will not prevent the release of a debtor, after six months' confinement, in execution of a decree for a sum not above 64 rs.

359. I am directed by the Court to inform you, that according to the provisions above quoted, it is incumbent on the Civil courts to release a debtor with the consent of his creditor, on the execution, by the former, of a *kistbundy*. The Court, however, observe, that the execution of a *kistbundy* for a larger sum than 64 rupees, including interest and costs of suit, cannot be considered as depriving the debtor of his claim to be released, under Clause 7, Section 45, Regulation 23, 1814, after he has been confined for the space of six months, in execution of a decree for a sum not exceeding 64 rupees.—*Con. 569, 23d July 1830, par. 2.*

The civil court may, at its discretion, release a person, confined in default of paying a fine, under reg. 23, 1814, sec. 45, cl. 7

360. The Court propose to inform the Judge that the limit of imprisonment, laid down in Clause 7, Section 45, Regulation 23, 1814, is applicable only to debtors confined under a decree of court. As however it cannot be intended that persons confined by order of the Civil court in default of payment of fine should remain in prison for life, the Court are of opinion that in such cases the Judge is competent to use his discretion in releasing the prisoner, due regard being had to the circumstances under which the fine was imposed.—*Con. 964, West. C. 10th, Cal. C. 31st July 1835, par. 2.*

The benefit of the insolvent rules may be allowed within the six months which is the limit of confinement for 64 rs.

361. The rules of Clause 7, Section 45, Regulation 23, 1814, make no alteration in this respect, except, that when the amount due under the decree does not exceed 64 rupees, six months is the maximum of imprisonment in satisfaction of it. It does not follow, that the benefit of the insolvent rules may not be allowed within the six months under the Regulation of 1806.—*Con. 328, 1st Sept. 1820.*

## SECTION XXIII.

### *Execution of Decrees against Persons connected with the Manufacture of Salt.*

Decrees against native officers & persons employed in salt manufacture, how to be executed

362. If a decree shall be passed against a Native officer, or any person under engagements on account of the salt manufacture and actually employed in it, and the court shall order the decree to be enforced at any time between the commencement of Kartick and the end of Assar, recourse may be had to his property, but his person shall not be attached or molested during that period. At the close, however, of the manufacturing season, the agent shall be responsible for his appearing before the court, if required, but the salt, or the advances, or any implements belonging to the Company, which may be in his hands shall not be liable for the decree. But during Sawun, Bhadoon and

Assin, and also in the manufacturing season, if the Salt Agent shall signify to the Judge, through an authorized vakeel of the court, that their attendance is not required in the business of the manufacture, the persons of all such individuals so employed, shall be equally liable with their property for decrees.—*Reg. 10, 1819, Sect. 22.*

363. If a decree shall be passed against an officer of a salt chowkey, and the court shall order the decree to be enforced, recourse may be had to his property ; but his person, if attached, shall not be removed without previous notice being given to the party under whose superintendence the officer acts, that another person may be immediately deputed to take charge of his place during his absence.—*Ibid, Sect. 29.*

Decrees against chowkey officers how to be executed.

## SECTION XXIV.

### *Execution of Decrees against Government.*

364. The costs and damages that may be awarded against Government in suits instituted under this section, are to be defrayed from the public treasury.—*Reg. 3, 1793, Sect. 11.*

How costs and damages awarded against govt. are to be defrayed.

365. The Court observe, that the rules in force relative to public suits, contain no specific provision for the execution of decrees against Government ; and that the general rules of process, for execution of decrees in favour of individuals amenable to the Zillah and City courts, viz. those contained in Section 7, Regulation 4, 1793, for the Lower Provinces, and Section 9, Regulation 9, 1803, for the Upper Provinces, cannot, to their full extent, be applied to the enforcement of decrees against Government —*Cir. Ord. 16th April 1818, par. 2.*

The rules for the execution of decrees in favor of private individuals cannot be applied to enforcing decrees against government

366. The Court further observe, that in the event of a judgment being passed against Government in any public suit, the officer entrusted with the management of the suit is required to send a copy of the decree and proceedings to the Governor General in Council, (or to the board under whose immediate authority he may have acted, and who are directed to forward the same to Government,) with any objections he may have to the decision, for the express purpose of enabling the Governor General in Council to determine whether an appeal from the decision should be preferred or otherwise.—*Ibid, par. 3.*

A copy of every decree against govt., and of the proceedings, is to be transmitted to the superior authority with objections, that it may be determined whether to appeal or not

367. It is also provided, (in Section 9, Regulation 2, 1805,) “ that in all original suits or appeals, wherein Government may be one of the parties, the court which may pass judgment, whether for or against Government, shall, in addition to the copies of decrees required by the existing Regulations to be delivered to the parties, transmit a copy of the decree, as soon as the same can be prepared, to the Secretary to Government in the Judicial department, for the information of the Governor General in Council.—*Ibid, par. 4.*

The court passing the judgment is also required to transmit a copy of the decree to the secy to govt.

368. The manifest intention of the provisions above noticed is, to inform the Governor General in Council, of all decrees passed by the Civil courts, in original suits or appeals, wherein Government may be one of the parties ; and to enable the supreme executive authority to judge and direct, whether such decrees should be appealed to a superior court, if open to appeal, (either regular or special,) or carried into execution, if final and conclusive ; or though appealable, if there be no sufficient ground for an appeal.—*Ibid, par. 5.*

The manifest intention of these provisions.

It is not to be supposed that Govt. would refuse to sanction the executive authorities to carry into effect the decision passed against it.

It can never therefore be necessary to attach money in any of the public treasuries by judicial process; cogent reasons against such a procedure

369. It cannot be supposed that the Governor General in Council, in a case regularly tried and finally decided by the Courts of judicature, in conformity with the laws and Regulation in force, would refuse the sanction of his authority to the proper executive officer for carrying into full effect the decision so passed against Government.—*Cir. Ord. 16th April 1818, par. 6.*

370. The Court, therefore, are of opinion, that it can never be requisite, for the ends of justice, to attach money in any of the public treasuries by judicial process from a Zillah, City, or Provincial court, in execution of decrees against Government; and that such unnecessary mode of proceeding is open to serious objection, both as derogatory to the ruling power of the country, and as liable to create public embarrassment, by the appropriation of funds intended for a different purpose.—*Ibid, par. 7.*

The collector or officer who has conducted the suit on the part of government should be directed, by precept, to comply with the final decision. In case of disobedience the court will make a report to govt.

371. The Court are not aware of any objection to a continuance of the established practice, in directing, by precept, the Collector, or other public officer who may have conducted the suit on the part of Government, to comply with a final decision given against Government; and any wilful disobedience on the part of the Collector, is sufficiently provided against by the existing rule, that if a Collector shall omit or refuse to obey any order or decree of a Court of judicature, the court from which the process shall have issued, is to fine him according to the nature of the offence. In the event of the Collector refusing or omitting to pay the fine, the court is to report the circumstances to the Governor General in Council, who, provided he shall approve of the fine, will order the amount to be stopped from the allowances which may be receivable by such Collector from Government.—*Ibid, par. 8.*

Case in which the collector states objections to the immediate execution of the judgment under instructions from the G. G. in C.

372. The Court are of opinion, however, that the above rule would not be applicable to a case in which the Collector might state objections to the immediate execution of a judgment against Government, under special instructions from the Governor General in Council. If such objections be not admitted by the court receiving the same, and no appeal be open to a superior court, it may be concluded that the Governor General in Council would order the decree to be carried into effect. If not, a report of the circumstances of the case, with a copy of the decree and other papers connected with it, should be transmitted to the Court of Sudder dewanny adawlut, for such order, or reference to Government, as on due consideration may appear proper, and consistent with the general provisions of the Regulation in force, in cases for which no specific rule may exist.—*Ibid, par. 9.*

S. B. of revenue may authorize the payment of money, in compliance with a decree of court.

373. The Sudder Board of Revenue is competent to authorize any disbursements ordered by a regular decree of a Court of justice, and to sanction the adjustment in the Collector's account of advances on account of law charges, when such advances prove irrecoverable, either from the suit being decided against Government, or from the death or poverty of the parties, reporting the same for the information of Government.—*Sud. Bd. Rep. 27th June 1842, Rule 27.*

## SECTION XXV.

### *Execution of the Decrees of the Supreme Court by the Zillah Courts.*

The courts are not required to execute a decree of the supreme court unless a writ directing execution issue from that court.

374. I am directed by the Court of Sudder dewanny adawlut to acknowledge the receipt of your letter of the 15th instant, requesting their opinion as to whether an application by Mr. E. Magnaghten, acting as receiver on the part of Kistoonund Biswas, to carry into execution a decree of the Supreme Court, accompanied by copy of the decree, is sufficient to authorize

your interference ; or whether a formal order of the Supreme Court, calling on you to give possession of the lands situated within your jurisdiction, should not issue, in order to bring the matter under your cognizance. In reply, I am directed to inform you that you should not interfere with the execution of decrees of the Supreme Court, unless a writ directing execution be issued by that court.—*Con. 567, 23d July 1830.*

375. The plaintiff who had obtained a decree from the Supreme Court for a sum of money secured by a mortgage on property which had been sold in execution of a decree of a mofussil court, sued to have the property re-sold in satisfaction of the decree of the Supreme Court—Judgment in favour of plaintiff.—*S. D. A. Sel. Rep. 25th Aug. 1841, vol. 7, p. 43.*

Property resold in satisfaction of a decree of the supreme court which had already been sold in execution of the decree of a mofussil court.

376. Claims which may be preferred in the course of executing a decree of the Supreme Court, by individuals not parties to the suit before that court, may be received and conducted in a summary form as authorized by the general regulations in force in executing decrees of the established mofussil courts.—*Con. 636, 20th May 1831.*

Claims preferred in the course of executing decrees of the supreme court by individuals not parties to the suit before that court, how to be dealt with.

377. In execution of a decree of the Supreme Court in favour of A, founded on a deed of mortgage executed by B, the Magistrate was considered to have acted judiciously in refusing to use forcible means to oust a third party from property in their possession, which they held under a decree of the Provincial court founded on a deed of agreement executed by B ; and was told he should confine his aid and assistance to the Sheriff's bailiff to prevent any breach of the peace, leaving the mortgagee to sue the third party in the Zillah court for the property claimed by him under the decree of the Supreme Court.—*Con. 800, 21st June 1833.*

Case in which the magistrate, in reference to the execution of the decrees of the supreme court, was directed to confine himself simply to aid the bailiff and to prevent a breach of the peace.

## SECTION XXVI.

### *Execution of the Decrees of the Calcutta Court of Requests in the Mofussil.*

378. If the defendant in any suit decided by the Court of Requests for the town of Calcutta, the plaintiff in which shall have obtained a judgment, shall retire before execution of the same, into the jurisdiction of the Judge of the zillah of the 24-Pargunnahs, the Judge of the said court, upon receiving a written application from the said plaintiff, either in person or by vakeel, setting forth the above circumstances, and accompanied by a copy of the judgment duly authenticated, is hereby authorized and directed to proceed to execute the said judgment in the mode prescribed by the existing Regulations for executing his own decree.—*Reg. 16, 1812, Sect. 2, Cl. 1.*

The judge of the zillah of the 24-pargunnahs, ordered under certain circumstances, to execute judgments of the commissioners of the court of requests for the town of Calcutta.

379. Provided always, that if the defendant in such case shall allege any cause against the execution of the judgment which shall appear to the Judge to require the determination of the Commissioners of the Court of Requests, the Judge shall upon such defendant entering into sufficient security to satisfy the judgment, if the Judge should deem this precaution necessary, allow the said defendant a reasonable period to apply to the said Commissioners ; upon the expiration of which, unless the said defendant should produce an order properly authenticated from the said Commissioners, certifying that the judgment ought not to be put into execution ; the Judge shall forthwith proceed to execute the judgment as prescribed in the preceding clause.—*Ibid, Cl. 2.*

The judge upon the defendant alleging any cause against the execution of the judgment, which may require the determination of the commissioners, how to proceed.

Defendants who have been confined by the commissioners, but liberated under the rules established by govt. on the 11th February, 1805, not again to be confined by the judge in execution of the same judgment; execution in such cases to proceed against the property only.

380. Provided further, that no defendant who shall have been confined in the jail of the said Commissioners, and shall have been liberated under the rules established for the guidance of the said Commissioners by the Governor General in Council on the 11th February, 1805, in consequence of having received diet money for a given period, shall again be confined by the Judge of the zillah of the 24-Pargunnahs in execution of the same judgment; but that in all such cases, execution shall proceed against the property only of the defendant.—*Reg. 16, 1812, Sect. 2, Cl. 3.*

How the courts are to proceed in executing decrees of the court of requests.

381. I am directed by the Court to acknowledge the receipt of your letter of the 21st ultimo, and in reply to inform you that in executing decrees of the Court of Requests under Regulation 16 of 1812, you should proceed in all respects in the same manner as you would in executing a decree of your own court, and to refer you to the Circular order of the 25th January, 1833, from which you will perceive that the fact of both parties being Europeans does not in any way affect your cognizance of the matter.—*Con 932. 6th Feb. 1833.*

## SECTION XXVII.

### *Execution of the Decrees of the 24-Pargunnahs by the Court of Requests in Calcutta*

Execution of the decrees of the 24-Pargunnahs within the limits of the court of requests

382. Whereas execution of the decrees of the Courts of justice of the zillah of the 24-Pargunnahs is often defeated, by the parties against whom the same have been obtained absconding from the limits of the said zillah into the town of Calcutta; and whereas by Regulation 16 of 1812, of the Bengal code, provision is made, where the like inconvenience occurs by parties absconding from the town of Calcutta into the said zillah, for the Judge of the said zillah enforcing the judgments of the Court of Requests of the town of Calcutta.—*Act XXVII. 1839, Sect. 1.*

If the defendant any suit in any court of the zillah of the 24-Pargunnahs retire within the jurisdiction of the court of requests, that court may execute the decree, if decree is for a cause of action which would have been originally cognizable by such court

383. It is hereby enacted, that if the defendant in any suit decided by any Court of justice of the zillah of the 24-Pargunnahs, the plaintiff in which shall have obtained a decree, shall retire before execution of the same into the jurisdiction of the Court of Requests, that court, upon receiving a written application from the Judge of Dewanny adawlut of the zillah of the 24-Pargunnahs, setting forth the above circumstances, and accompanied by a copy of the decree duly authenticated, is hereby authorized and directed to proceed to execute the said decree in the mode prescribed for the execution of judgments obtained in the Court of Requests, and on payment of the like costs as are demanded for the execution of such judgments in ordinary cases. Provided always, that nothing in this Act contained shall be held to authorize the said Court of Requests to execute any decree except the cause of action in respect of which such decree was obtained were such that if it had occurred within the local jurisdiction of the said court, it would have been cognizable by the same.—*Ibid, Sect. 2.*

## CHAPTER IX.

### SUDDER DEWANNY ADAWLUT.

#### SECTION I.

##### *Jurisdiction and Constitution of the Calcutta Court of Sudder Dewanny Adawlut.*

1. And it is hereby enacted, that from the said day, and within the said territories, no person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever, excepted from the jurisdiction of any of the courts hereinafter mentioned — that is to say: The Courts of Sudder dewanny adawlut, in the territories subject to the Presidency of Fort William in Bengal.—*Act XI 1836, Sect. 2.*

No persons, by reason of place of birth or of descent, shall be exempt from the jurisdiction of the courts enumerated.

2. The Courts of Sudder dewanny adawlut and Nizamut adawlut shall in future consist of a Chief Judge, and of as many Painsne Judges, as the Governor General in Council may from time to time deem necessary for the despatch of the business of those courts. —*Reg. 12, 1811, Sect. 2, Cl. 2.*

What number of judges the courts of S D A and N. A. shall in future consist of

3. The denomination of Chief or Senior Judge in the Courts of Sudder dewanny and Nizamut adawlut, and in the Provincial courts, as well as the official designation of first, second, third, fourth and fifth Judges in those courts, respectively, shall be discontinued.—*Reg. 3, 1829, Sect. 2.*

The denomination of chief or senior judge in the courts of S D A and N A, and in the provincial courts, and designation of first, second, third, fourth or fifth judges in the provincial courts, discontinued.

4. The Chief Judge, and each of the Painsne Judges, who may be appointed to the Court of Sudder dewanny adawlut, previous to entering upon the execution of the duties of his office, shall take and subscribe before the Governor General in Council, the same oath, as is required to be taken and subscribed by the Judges of the Provincial courts of appeal, according to the form prescribed in Section 2, Regulation 5, 1793.—*Reg. 2, 1801, Sect. 4.—Form of Oath.*—“ I, A. B., appointed Judge of the Provincial court of appeal for the division of —, solemnly swear, that I will administer justice conformably to the Regulations that have been, or may be, passed by the Governor General in Council, according to the best of my ability, knowledge, and judgment, without fear, favour, promise, or hope of reward; that I will not receive, directly or indirectly, any present, nuzzur, either in money or effects of any kind, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the Court of appeal of which I am appointed a Judge; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly,

The judges to take an oath similar to that prescribed for judges of the provincial courts of appeal.

Oath to be taken by the judges.



any present or nuzzur, in money, or effects of any kind, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided, in the court; that I will render a true and faithful account of all sums of money that may be paid into the court, or disbursed from it; that I will not be concerned, directly or indirectly, in the purchase of goods or commodities in the British dominions in Bengal for the purpose of remitting money to Europe, or in any commercial transactions; and that I will not derive, directly or indirectly, any emoluments or advantages from my station, excepting such as the orders of Government do or may authorize me to receive. So help me God."—*Reg. 5, 1793, Sect. 2.—Benares Reg. 9, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 4, 1803, Sect. 2.*

The rules requiring the Judges of the courts of S. D. A. & N. A. to take the oaths of office before the G. G. in Council, rescinded.—The Judges or other public officers shall in future be sworn in before the court of N. A., or before any person who may be commissioned to administer them.

5. The rules contained in Sections 4 and 11, Regulation 2, 1801, which require the Judges who may be appointed to the Courts of Sudder dewanny adawlut and Nizamat adawlut to take the prescribed oaths of office before the Governor General in Council, are hereby rescinded, and the said Judges, as well as all other public officers who are required by the Regulations in force to be sworn in before the Governor General in Council shall, in future, take and subscribe the prescribed oaths of office before the Court of Nizamat adawlut, or before any person whom the Governor General in Council may commission to administer them.—*Reg. 3, 1829, Sect. 3.*

Seal of the court.

6. The court is to use a circular seal, two inches and a quarter in diameter, with an inscription to the following effect, in the Persian and Bengal characters and languages and in the Hindoostanee language and Nagree character—"The Seal of the Sudder dewanny adawlut." The Court is to be held in a large and convenient room at Calcutta, and to sit de die in diem as the despatch of business may require, and is empowered to make such reasonable adjournments as may be deemed expedient consistently with the business. No rule, order, proceeding, or decree, is to be made but on court days, and in open court.—*Reg. 6, 1793, Sect. 3.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 5, 1803, Sects 2 and 3.*

Court to be held in Calcutta

To sit de die in diem

And to make reasonable adjournments.

No decree, order, &c. to be made but on court days, and in open court

To be an open court

7. The Court of Sudder dewanny adawlut is to be an open court.—*Reg. 2, 1801, Sect. 6.*

Court to regulate the mode and order of their own proceedings under the rules prescribed in the regulations.

8. The Judges of the Sudder dewanny adawlut are authorized to regulate the mode and order of their own proceedings; as well as the execution of their process, subject to the rules prescribed by the Regulations.—*Ibid.*

Hours of attendance at the S. D. A.

9. The hours of attendance at the Sudder dewanny adawlut are from 11 A. M. to 5 P. M., during which time the attendance of the Native officers and pleaders of the court is strictly required, except in cases of leave of absence obtained, or certified sickness.—*Rules S. D. A. 14th Nov. 1834.*

S. D. A. may adjourn that court, or not, as they may judge proper.

10. The Court of Sudder dewanny adawlut are authorized to adjourn that court during the periods of the two vacations abovementioned, [the Mohurru and the Dusserah] or otherwise, as they may judge proper.—*Reg. 3, 1798, Sect. 3.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 5, 1803, Sect. 2.*

11. The Courts of Sudder dewanny and Nizamut adawlut shall, from time to time as circumstances require, proscribe the forms, and fix the periods of transmission, and mode of preparation of all reports, calendars, registers, or other statements, to be furnished by the Civil or Criminal courts, European or Native, or by the judicial or police officers under this Presidency.—*Reg. 7, 1829, Sect. 3, Cl. 1.*

Their forms and periods of transmission to be fixed by the S. D. A. & N. A.

12. It is hereby enacted, that it shall be competent to either of the Courts of Sudder dewanny and Nizamut adawlut, within the territories subject to the Presidency of Fort William in Bengal, by an order, under the signature of the Register of such court, to transfer to such Register the duty of preparing appealed causes for trial, and of executing the decrees and orders of the said courts, and to authorize him to issue the necessary process, and to proceed thereupon agreeably to the rules prescribed by the general Regulations of Government.—*Act XVII. 1811, Sect. 1.*

The courts of S. D. A. and N. A., within the territories subject to the Presidency of Fort William may transfer to register the duty of preparing appealed causes for trial and of executing the decrees, &c. of the said courts, and may authorize him to issue process.

13. And it is hereby enacted, that in proceedings before the said courts it shall not be necessary to take any security for costs; and it shall be competent for the said Courts of Sudder dewanny and Nizamut adawlut to frame such rules of practice for the due exercise of the civil and criminal jurisdiction vested by the Regulations in those courts, as may from time to time be found requisite. And such rules when so framed shall be submitted to the Governor General of India in Council; and after the same shall have been approved by the said Governor General of India in Council, they shall be of the same force as if they were inserted in this Act.—*Ibid, Sect. 2.*

Not necessary to take security for costs in proceedings before such courts; such courts may frame rules of practice; rules to be submitted to G. G. in C for approval.

14. All rules of practice under Act XVII. 1841, to be drawn up in English and Oordoo, and hung up at the entrance of the court-house for one month, to enable the public to suggest alterations or offer objections, previous to submission to the Supreme Government for approval.—*Rule S. D. A. 20th Jan 1843.*

Rules of practice under act 17, 1841, will be drawn up in English and Oordoo, and hung up at the entrance of the court-house for one month.

15. In cases for which no specific rules may exist, the Sudder dewanny adawlut is to act according to justice, equity, and good conscience.—*Reg. 6, 1793, Sect. 31.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Conq. Prov. Reg. 5, 1803, Sect. 30*

Court how to act in cases for which no rule may exist

## SECTION II.

### *Court of Sudder Dewanny, Western Provinces.*

16. From and after the date of the promulgation of this Regulation, such parts of Regulations 10 and 16, 1795, of Regulations 5 and 8, 1803, and 8 of 1805, or any other Regulation in force, as extend the powers of the Sudder dewanny and Nizamut adawlut stationed at Calcutta to the province of Benares and the Ceded and Conquered Provinces, are hereby rescinded.—*Reg. 6, 1831, Sect. 2.*

Rules extending the powers of the courts of S. D. A. & N. A. in Calcutta, to the province of Benares and the ceded and conquered provinces, rescinded

17. A Court of Sudder dewanny and Nizamut adawlut shall be constituted for the Western Provinces, to be ordinarily stationed at Allahabad, and to exercise jurisdiction over the whole of the districts comprised within the divisions numbered in Section 2, Regulation 1, 1829, as No. 1 to 9, inclusive; and a Court of Nizamut adawlut for the province of Kumaon, and the Saugor and Nerbudda territories.—*Ibid, Sect. 3, Cl. 1.*

A court of S. D. A. and N. A. constituted for the western provinces, and its jurisdiction defined.

1st division to contain the districts under the Magistrates, Collectors, Joint-Magistrates and Sub-Collectors of	Scharunpore, Mozuffernugger, Meerut, and Boolundshuhur.
2d Ditto ... .. Ditto of ... ..	Agra, Allyghur, and Sydabad.
3d Ditto ... .. Ditto of ... ..	Furruckabad, Mynpooree, Sirpoora, and Etawah.
4th Ditto ... .. Ditto of ... ..	Moradabad, Nugeena, and Suheswan.
5th Ditto ... .. Ditto of ... ..	Bareilly, Shahjehanpore, and Pilibheet.
6th Ditto ... .. Ditto of ... ..	Cawnpore, Belah, and N. Bundelkund.
7th Ditto ... .. Ditto of ... ..	Allahabad, Futtchpore, and Banda.
8th Ditto ... .. Ditto of ... ..	Benares, Mirzapore, and Jannpore.
9th Ditto ... .. Ditto of ... ..	Goruckpore, Azimguhr, and Ghazeepore

—*Reg. 1, 1829, Sect. 2*

The G. G. in C<sup>d</sup> declared competent to fix the residence of the sudder courts for the W. provinces at any place within the territories

18. It shall be competent, however, to the Governor General in Council to fix the station at which the Courts of Sudder dewanny and Nizamut adawlut for the Western Provinces shall reside, at such place within the territories belonging to this Presidency, as may, from time to time, be deemed expedient.—*Reg. 6, 1831, Sect. 3, Cl. 2.*

The sudder courts for the W. provinces to open courts, and to be holden as prescribed by regulations for the Calcutta sudder courts

Rule to be observed in cases requiring the concurrent opinion of two judges

19. The Courts of Sudder dewanny and Nizamut adawlut for the Western Provinces are to be open courts, and to be holden as directed in Section 3, Regulation 6, and Section 66, Regulation 9, 1793, as soon as a convenient place shall have been provided for the purpose. Whenever, and so often, as only one Judge may be present with the courts, or if any difference of opinion should arise when only two Judges may be present in either court, in any matter requiring under the existing Regulations the concurrent voices of two Judges, the question shall be referred, as the case may be, for the determination of one of the Judges of the Court of Sudder dewanny or Nizamut adawlut stationed at Calcutta.—*Ibid, Sect. 7, Cl. 1.*

The powers & duties of the sudder courts for the W. provinces to be the same as those of the Calcutta sudder courts.

20. The Courts of Sudder dewanny and Nizamut adawlut for the Western Provinces constituted by this Regulation, shall possess within the divisions, provinces, and territories subject to their jurisdiction, all the powers vested under the existing Regulations in the Courts of Sudder dewanny adawlut and Nizamut adawlut constituted by Section 2, Regulation 6, and Section 67, Regulation 9, 1793, and shall perform all the duties required to be performed by those courts under Regulations 6 and 9, 1793. and under all other Regulations which have been passed and published in the mode pre-

scribed by Regulation 41, 1793, subject to all the modifications and provisions contained in such Regulations, and to the following further provision.—*Reg. 6, 1831, Sect. 6.*

21. The Court of Sudder dewanny and Nizamut adawlut constituted by this Regulation, shall consist of one or more Judges, shall be assisted by two mufties, and shall have a Register, to be styled Register to the Sudder dewanny and Nizamut adawlut for the Western Provinces, and such other officers as may be deemed necessary.—*Ibid, Sect. 4.*

Number of judges and other officers to belong to the courts constituted under this regulation

22. Tho Judges, Registers, and other officers who may be appointed to the Courts of Sudder dewanny and Nizamut adawlut for the Western Provinces, previous to entering upon the execution of the duties of their respective offices, shall take and subscribe the same oath or solemn declaration as is prescribed in the existing Regulations for individuals appointed to the like offices in the Court of Sudder dewanny and Nizamut adawlut situated at Calcutta.—*Ibid, Sect. 5.*

Oaths to be taken by the officers of sudder courts for the W provinces.

23. So much of Clause 2, Section 9, Regulation 1, 1829, as vests the Resident at Delhi with the powers of the Sudder dewanny and Nizamut adawlut within the districts of the Northern Doab, is hereby rescinded.—*Ibid, Sect. 8, Cl. 1*

Powers of S D A. and N. A. vested in the resident at Delhi, rescinded.

24. The powers and authority heretofore vested in the Nizamut adawlut stationed at Calcutta, over the province of Kumaon by Regulation 10, 1817, are hereby transferred to the Nizamut adawlut for the Western Provinces.—*Ibid, Sect. 9.*

The powers and authority vested in the Calcutta N A. over the province of Kumaon, transferred to the N A. for the W. provinces

### SECTION III

#### *General Powers of single Judges of the Sudder Court.*

25. Any one or more of the Judges of the Sudder dewanny adawlut, may also take the depositions of witnesses in open court: instead of causing the same to be taken by the Register, as authorized by Regulation 6, 1793.—*Reg. 2, 1801, Sect. 6*

Any judge may take depositions instead of causing them to be taken by the register

26. The sitting Judge may perfect interlocutory decrees and orders passed by himself in conformity with Section 2 of this Regulation, or by any other Judge or Judges of a Provincial court, in pursuance of the Regulations in force. Provided that it shall not in any case whatever, be competent to a single Judge to reverse or alter the decree, or order, of any other Judge, or Judges of a Provincial court.—*Reg. 13, 1810, Sect. 4, Cl. 2.*

Sitting judge may perfect interlocutory decrees and orders passed in conformity with sec 2 of this regulation. proviso, against alteration of decrees or order of any other judge or judges of the provincial court

27. On the trial of an original cause instituted before a Provincial court, as well as on the hearing of appeals to that court, it shall be competent to a single Judge, holding a sitting of the court under this Regulation, to pass such orders as he may deem just and consistent with the Regulations, respecting the admission of evidence, examination of witnesses, and all other points connected with the trial of the suit before the court, subject to the provision contained in Section 7, Regulation 1, 1807: whereby, the Provincial court at large, or any two Judges of the court, are declared at liberty to re-examine witnesses,

Sitting judge may pass orders on admission of evidence, examination of witnesses, and other points connected with the trial of suits before the court, subject to the provision in sec 7, reg. 1, 1807.

whose depositions may have been taken before a single Judge, if it appear requisite; to examine any other witnesses in the cause; and generally to pass any order that may appear proper and consistent with the Regulations, whether in addition to, or in qualification, or abrogation of, any previous order of a single Judge.—*Reg. 13, 1810, Sect. 4, Cl. 4.*

A single judge may commit, or hold to bail, for trial before a court of circuit witnesses guilty of perjury in cases brought before him.

28. In the event of a witness, in a case brought before a single Judge under this Regulation, appearing guilty of wilful perjury, as defined in Section 4, Regulation 2, 1807, it shall be competent to the sitting Judge to order that such witness be committed, or held to bail for trial before the Court of circuit.—*Ibid, Cl. 5.*

Sitting judge may proceed, as the provincial court at large are empowered to proceed, upon miscellaneous petitions, under restrictions stated in this regulation.

29. A single Judge, holding a sitting of the Provincial court under this Regulation may receive miscellaneous petitions, relative to matters depending before, or decided by, any Zillah or City court, in all cases wherein the Provincial courts are authorized to receive such petitions; as well as all other petitions which the Provincial courts are authorized by the Regulations to receive; and to proceed thereupon as the Provincial courts are empowered to proceed; under the restrictions stated in this Regulation.—*Ibid, Cl. 6.*

A single judge of the S. D. A. may exercise the same power and perform the same duties as the sitting judge of a provincial court.

30. A single Judge of the Sudder dewanny adawlut, holding a sitting of that court, may perform the same duties, and exercise the same powers, as a single Judge of a Provincial court is authorized to perform and exercise, by Section 4 of this Regulation, with the following modification of clause third.—*Ibid, Sect. 8, Cl. 1.*

And may determine on the admission or rejection of all applications for the appeals except in cases decided by himself.

31. The sitting Judge may determine, on the admission or rejection of all applications for appeals, whether regular or special, to the Court of Sudder dewanny adawlut, except in cases wherein the judgment or order appealed from may have been passed by himself.—*Ibid, Cl. 2.*

A single judge is restricted from reversing or altering in any case the decision of either two or more judges of the court.

32. Provided that it shall not, in any case, be competent to a single Judge of the Sudder dewanny adawlut to reverse or alter the decision or order of two or more Judges of the court.—*Ibid, Cl. 3.*

Further provision that no judge shall sit on an appeal from a judgment or order passed by himself.

33. No Judge of the Sudder dewanny adawlut shall sit upon the trial of an appeal from a judgment or order passed by himself.—*Ibid, Sect. 6, Cl. 4.*

When the question for decision was one on which the Sudder judge, as zillah judge, had not passed an order, he was competent to give an opinion in the sudder.

34. Mr. Walpole, as zillah Judge, passed a decree for land and *wasulat*, and the decree was confirmed by the Provincial court to which Mr. Walpole had been promoted. In execution of the decree a question arose as to the *quantum of wasulat*, and the order of the zillah Judge on this question was appealed to the Provincial court. Held that as the order fixing the amount of *wasulat* was not passed by Mr. Walpole, and the question for decision was one on which he had not recorded an opinion, he was competent to give an opinion on the case.—*Con. 497, 13th March 1829.*

Decisions and orders of a single judge of the S. D. A. passed in conformity with foregoing section, to have the same operation and effect, as decisions and orders of the court at large.

35. Decisions and orders of a single Judge of the Court of Sudder dewanny adawlut, passed in conformity with the foregoing section, shall have the same operation and effect as decisions and orders passed by two or more Judges of that court under the Regulations in force.—*Reg. 13, 1810, Sect. 7.*

36. In modification of Sections 6 and 8, Regulation 18, 1810, or of any other Regulation in force, relating to separate sittings being held before, and the powers to be exercised by single Judges of the Sudder dewanny adawlut, it is hereby declared that it shall be competent to a single Judge of the court to hold a sitting of court, on all matters within the cognizance of the Sudder dewanny adawlut, and to pass orders or judgments in conformity to the Regulations, subject to the following provisions. [*Vide Section 5 of this Chapter.*]—*Reg. 9, 1831, Sect. 2, Cl. 1.*

Single judge of the S. D. A. declared competent to hold sitting of court and to pass orders or judgments.

37. In explanation of the provisions of Section 2, Regulation 9, 1831, it is hereby declared, that a single Judge of either Court of Sudder dewanny adawlut is competent to dispose of all cases regular, as well as miscellaneous, with exception to those described in clause fourth of the section aforesaid.—*Reg. 7, 1832, Sect. 15.*

The powers of a single judge of the S. D. A. as conferred by sec 2, reg 9, 1831, explained.

38. In reply to your letter of the 7th ultimo, I am directed by the Court of Sudder dewanny adawlut to inform you, that the Court are of opinion, that a single Judge of a Provincial court [of the Sudder court] is competent to direct a zillah or city Judge to suspend the execution of an order passed in such summary suits as are appealable, and generally in all miscellaneous cases, until a decision shall have been passed on the appeal.—*Con. 591, 15th April 1831.*

A single judge of the S. D. A. may order a zillah judge to suspend the execution of an order in an appealable summary case, and in all miscellaneous cases.

39. The zillah Judge, in executing a decree obtained by A. against B., rejected the plea of the son of B. that the decree had been satisfied, and ordered the sale of B.'s property. Held, that a single Judge of the Sudder dewanny adawlut was competent, without calling for the proceedings, to annul the sale, and direct further evidence to be taken as to the truth of the statement of B.'s son.—*Con. 804, West C. 19th July, Cal. C. 16th Aug. 1833.*

A single judge of the S. D. A. is competent to annul a sale and direct further evidence to be taken regarding the previous satisfaction of the decree.

## SECTION IV

### *Differences of Opinion among the Judges.*

40. In the event of any difference of opinion arising when the three Judges shall be present in court, the voices of the majority shall determine the question; but if a difference of opinion should arise when two Judges only shall be present in court, the question then before the court shall be postponed for adjudication, until the third Judge shall attend.—*Reg. 2, 1801, Sect. 6.*

Rules in cases of difference of opinion between the judges present.

41. Whenever, and so often, as only one Judge may be present with the courts, or if any difference of opinion should arise when only two Judges may be present in either court, in any matter requiring under the existing Regulations the concurrent voices of two Judges, the question shall be referred, as the case may be, for the determination of one of the Judges of the Court of Sudder dewanny or Nizamat adawlut stationed at Calcutta.—*Reg. 6, 1831, Sect. 7, Cl. 1.*

Rules to be observed in cases requiring the concurrent opinion of two judges.

42. Provided, moreover, that in such case, it shall be sufficient that the Judge to whom the point may be referred should form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their vakeels.—*Ibid, Cl. 2.*

Proviso.

In all cases which require a decision by the majority, the Calcutta courts of S. D. and N. A. declared competent to refer the question to a Judge of those courts in the W. provinces.

43. Whenever and so often as there may be four Judges present at the Courts of Sudder dewanny and Nizamut adawlut at Calcutta, and there may be an equality of voices in cases which require a decision by the majority, it shall be competent to the court to refer the question for decision to a Judge of the Sudder dewanny or Nizamut adawlut (as the case may be) in the Western Provinces, and it shall be sufficient that the Judge to whom the point may be referred shall form and record his judgment on a careful perusal and consideration of the proceedings, and without requiring the attendance of the parties or their wakeels.—*Reg. 9, 1831, Sect. 9.*

The concurrent opinion of two Judges who agree in all points of the decision, is conclusive, and final against the opinion of two others who do not agree with each other.

44. The Court determined on the 25th September, 1829, that the concurring opinion of two Judges, who agree in all points of the decision, is final and conclusive, though it differ from the opinions of two other Judges who do not agree with each other.—*Con. 526, 25th Sept. 1829.*

To whom reference must be made when a difference of opinion arises between the Judges who passed the decision adjudicating costs, mesne profits, &c.

45. After a civil case has been decided, should a difference of opinion regarding the amount, or adjudication of costs, mesne profits, or other matters of a similar nature arise between the Judges who passed the decision, the point at issue only shall be referred to a third Judge, who shall not, however, be at liberty to impugn the judgment recorded on the case, but shall confine himself strictly to the point referred to him. —*Rules S. D. 1. 14th Sept. 1835.*

## SECTION V

### *Appeals from the Decision of the Lower Courts tried by single Judges of the Sudder Court.*

To confirm decisions in appeal where no sufficient ground has been shown to impugn the decision appealed against

46. In the trial of appeals, or on the hearing of any petition of appeal from the decision or orders of any court of inferior jurisdiction, if a single Judge of the Sudder dewanny adawlut shall be of opinion that no sufficient ground has been shewn to impugn the correctness or justness of such decision or order, it shall be competent to such single Judge, without reference to the order of the file, to confirm the same without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, as the nature of the case may appear to require.—*Reg. 9, 1831, Sect. 2, Cl. 2.*

Or to issue an injunction for a revision of the decision pointing out defects

47. On the other hand, if a single Judge shall be of opinion, that the decision or order appealed against ought to be altered or reversed, as being manifestly unjust, or at variance with some Regulation in force, or in opposition to the Hindoo or Mahomedan law, or other law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue, it shall likewise be competent to a single Judge to issue an injunction pointing out the irregularity, illegality, or other defect apparent in the proceedings, decision, or order appealed against, and requiring that the court by which the same may have been held or passed shall revise the case, and proceed thereon in such manner as may appear conformable to justice and to the Regulations.—*Ibid.*

48. Whenever a decision of a zillah Judge shall be confirmed under the provisions of Clause 2, Section 2, Regulation 9, 1831, the Judge by whom it is confirmed, is to direct a copy of his order to be forwarded to the zillah Judge, with a view to enable the opposite party to take immediate means for the execution of the decree given in his favour.—*Rules S. D. A. 20th Feb. 1835.*

Where a decision of the zillah Judge is confirmed by a single Judge of the S. D. A. he will forward it to the lower court, that the decree may be executed.

49. A single Judge of the Sudder dewanny holding a sitting under this Regulation, may exercise his discretion in calling for the proceedings of the lower courts, or such parts of them as may appear necessary, and may further order a report in English or Persian, as the occasion may render advisable, on any points requiring explanation, prior to passing a determination on the case, or matter in appeal.—*Reg. 9, 1831, Sect. 2, Cl. 3.*

Discretion vested in a single Judge to call for proceedings of the lower courts, or parts of them, as may seem advisable

50. With reference to the provisions of Section 2, Regulation 9, 1831, the following rules of practice are agreed to by the Court.—*Con. 675, 17th Feb. 1832. par. 1.*

Rules of practice regarding reg 9, 1831, sec. 2.

51. The Court are of opinion that if the decision of the lower court be confirmed without the attendance of the opposite party, the appellant is not entitled to receive back any proportion of the value of the stamped paper on which his petition of appeal is written, and that the appellant's vakeel is entitled to the whole of the fee deposited by the appellant.—*Ibid, par. 3.*

Rule regarding the return of stamp and the vakeel's fees, when the decision of the lower court is confirmed without the attendance of the opposite party

52. If the attendance of the opposite party shall not be required, and the said party shall nevertheless file an answer to the petition of appeal through a vakeel of the court, the fee of the said vakeel shall be payable by the opposite party himself.—*Ibid, par. 4.*

Rule regarding the vakeel's fees when the opposite party, tho' not required to attend, employs a vakeel.

53. If an injunction be issued for a revision of the decision, the Court are of opinion that in conformity to the rule prescribed in Section 8, Regulation 19, 1817, the stamp duty paid by the appellant on his petition of appeal should be returned to him, and the fees of the vakeel of the appellant and respondent (if attending) limited to a sum not exceeding one-fourth of the established fee.—*Ibid, par. 5.*

Rule regarding the stamp and the vakeel's fees when an injunction is issued for a revision of the decision.

54. Resolved, that the powers vested in the Court of Sudder dewanny adawlut by Clause 2, Section 2, Regulation 9, 1831, on the receipt of a petition of appeal from the decision of an inferior court can be exercised in those cases only in which an appeal is within the cognizance of the court under the general Regulations, and that consequently the court cannot interfere on the receipt of petitions of appeal against the decision of a zillah or city Judge passed by the latter in appeal from the decision of Sudder Amceens and Moonssiffs, the decision of the zillah or city Judge being in such cases declared final by Section 28, Regulation 5, 1831.—*Con. 698, West. C. 27th April, Cal. C. 18th May 1832*

The S. D. A. cannot exercise in reference to the orders of the zillah judges in suits decided by S amceens and moonssiffs, the powers vested in them by reg 9, 1831, sec. 2, cl. 2.

55. All first appeals must be admitted as a matter of right, provided they be preferred within the period prescribed by the Regulations: so that the confirmation of the decision of the lower court, prior to a perusal of the original proceedings, is to be considered, not as a rejection, but a final dismissal of the appeal on consideration of its merits.—*Con. 712, 14th Dec. 1832.*

The confirmation of the decision of the lower court, prior to a perusal of the original proceedings, is a final dismissal of the suit on its merits.

56. On the first point referred in your letter of the 6th July, I am directed to acquaint you that the court consider themselves fully competent to exercise the powers vested in them by the 2d clause of Section 2, Regulation 9, 1831, and Section 15, Regulation 7, 1832, without calling for the proceedings, whenever the order or decision appealed against, whether in a re-

Extensive authority enjoyed by the S. D. A. in exercising the powers vested in them by reg. 9, 1831, sec. 2, cl. 2.



gular or summary suit, may appear to them manifestly unjust or illegal, or on any other of the grounds defined in the clause first cited. In such cases a revision of the proceedings is obviously unnecessary to the determination of a fact which is clear and manifest in the face of the order or decision itself, or can be shewn to be so by documents accompanying it. And you will observe that the following clause of the same section provides for cases wherein the court may see cause of doubt by giving them a discretion to call for the proceedings of the lower court, or such parts of them as may appear necessary, and by the 7th clause of the same section, with the view of enabling the court duly to exercise the powers vested in them by the said section, the several courts of subordinate jurisdiction are strictly enjoined to conform to those parts of the Regulations in force, which require them to record the point or points at issue between the parties and the grounds on which their judgments or orders may be issued.—*Con.* 839, *West C.* 11th Oct, *Cal. C.* 8th Nov. 1833

No final decision can be passed against a respondent till he has been summoned

57. No final decision of the court can be passed against a respondent until he has been summoned in the usual course.—*Con.* 944, *West C.* 10th April, *Cal. C.* 1st May 1835.

A single judge may stay execution of judgment or order until final decision

58. It shall further be competent to a single Judge to direct that the execution of any judgment or order passed by an inferior court, in all cases in which that measure may appear to him expedient, may be stayed until a final decision has been passed thereon.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 5.

Power of a single judge of the S. D. A. when he dissents from part of the decision of a lower court, and agrees to the rest

59. A single Judge of the Sudder dewanny adawlut found part of the disposition of a judgment of the lower court untenable, and concurred in the rest. On assent of the party benefiting, by such untenable part to forego its benefit, final judgment, essentially judgment of amendment, is passed.—*S. D. A. Sel Rep* 25th Sept. 1833, *vol.* 5, *p.* 328

Case in which a single judge of the S. D. A. passed a decision reversing that of the lower court.

60. In a case, in which a *razeenamah* and *soolehnamah* were executed by both parties, a decision in conformity therewith, although in reversal of the judgment of the lower court, was passed by a single Judge of the Sudder dewanny adawlut —*S. D. A. Sel Rep.* 19th April 1845, *vol.* 7, *p.* 202.

## SECTION VI

### *Reversal of the Order or Decree of a Lower Court by the Sudder Court*

Case in which it is not competent to a single judge to alter or reverse a decree or order of a lower court.

61. Provided however, that if the decree or order appealed against shall have been passed in a regular suit or appeal after a full investigation of the merits, and the ultimate judgment to be passed on the case may rest on a mere difference of opinion as to the facts or evidence, or on a disputed or doubtful point of law, or construction of any Regulation in force, it shall not be competent to a single Judge to alter or reverse such decree or order. In such cases the single Judge will be guided by the rules and practice heretofore in force.—*Reg.* 9, 1831, *Sect.* 2, *Cl.* 4.

Provision when the single judge may be of opinion that a decision, or order, appealed against should be reversed, or altered.

62. In the trial of appeals from decisions or orders of any Provincial, Zillah or City court, if a single Judge of the Sudder dewanny adawlut, sitting upon the appeal, shall be of opinion, that the decision, or order, appealed against, ought to be reversed, or altered, he shall not pass any decree, or final order thereupon, until one or more of the other

Judges of the court can sit with him upon the appeal in question.—*Reg. 13, 1810, Sect. 6, Cl. 3.*

63. A. obtains a decree in the Zillah court against B., who appeals to the Provincial court. The Judges of the latter court call for a *bewustah*, and upon this *only* the decision of the Zillah court is reversed. A. appeals to the Sudder dewanny adawlut, where the *bewusteh* appears to be at variance with the *shasters* and inadmissible, but the evidence is esteemed sufficient to establish the right of B. On this evidence one Judge of the Sadder dewanny adawlut proposed to confirm the reversal of the Zillah decree, the *bewustah* of the Provincial court being rejected. Held, that the rejection by the sitting Judge of the law opinion delivered in the court below, rendered it necessary that the case should be referred to another Judge for his concurrence.—*Con. 538, 29th Jan 1830.*

The rejection by the sitting judge of the *bewustah* of the pundit of the lower court, renders it necessary to refer the matter to another judge.

64. In modification of the third clause of Section 2. Regulation 13, 1810, requiring the sitting of two Judges to reverse or alter a decision or order appealed to a Provincial [the Sudder] court, and of such part of any other Regulation in force, as directs that decrees are to be signed by the Judges passing the same it is hereby provided, that when a single Judge of a Provincial [the Sudder] court, trying a case in appeal from a zillah or city Judge, Assistant Judge, or Register, shall be of opinion, that the decision appealed from ought to be reversed, or altered, and shall record his sentiments to that effect; and another Judge of the Provincial [the Sudder] court, sitting afterwards upon the same appeal, shall concur in the opinion so recorded, it shall be competent to the second Judge to pass the decree, or final order, in conformity thereto, and to cause the same to be carried into execution, in the mode prescribed by the Regulations, without waiting for a sitting of both Judges, when circumstances may not conveniently admit of it. In such cases, the decree or order shall be signed by the Judge present at the final sitting, and the signature of the Judge who first sat shall not be considered requisite: but his opinion, as recorded by him, shall be recited in the decree or final order, and in the copies of it delivered to the parties.—*Reg. 25, 1814, Sect. 8.*

Powers of single judges of the provincial courts sitting upon appeals in succession, and concurring in opinion

*These rules were extended to the Sudder Court by Section 16 of that Regulation*

65. It is hereby enacted, in modification of Section 16, Regulation 25, 1814, that when a single Judge of the Sudder dewanny adawlut, trying a case in appeal, regular or special, from any subordinate court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other Judges of the court to sit with him, and that the appeal shall be then heard by the three Judges sitting together, and be decided by them without any additional voices. In such cases the decree or final order shall be signed by the three Judges, if they agree together; but, if one of them dissent from the view taken by the majority, by the two Judges who agree together, and the signature of the third Judge shall not be considered requisite, but his opinion shall be recited in the decree or final order.—*Act II. 1843, Sect. 1.*

It is enacted that a Judge, sitting in appeal, regular or special, is of opinion that the decision appealed against ought to be altered or reversed, he shall call in two other judges to sit with him, & the three shall decide the case, & if they agree, sign, or the opinion of him who differs shall be recited in the decree.

66. Provided, that the above rule shall not be applicable to summary appeals, or to appeals in miscellaneous cases, nor shall it be held to interfere with the powers of a single

Act not to apply to summary appeals, nor appeals in miscellaneous cases

neous cases, nor to powers of a single judge under cl. 2, sec. 2, reg. 9, 1831.

Judge of the Sudder dewanny adawlut, under Clause 2, Section 2, Regulation 9, 1831.—

*Act II. Sect. 2.*

Rule regarding a difference as to some of the reasons of the decree of the lower court, while there is agreement as to others.

67. Difference as to some of the reasons of the decree of a lower court, while there is agreement as to others, does not constitute the difference of judgment, which requires the single Judge thus partially differing, to refer the case for the decision of a full court, under Act II 1843.—*S. D. A. Sel. Rep. 16th Jan. 1846, vol. 7, p. 223.*

In cases of difficulty or importance, a single judge may refer the case to two or more judges after recording his own opinion.

68. Provided however, that nothing in the foregoing clauses of Section 2 shall be understood to prohibit a single Judge in any case of difficulty or importance in which he may deem it expedient and proper that the matter at issue should be decided by two or more Judges of the court from recording his own opinion thereon and referring the case to another Judge.—*Reg. 9, 1831, Sect. 2. Cl. 6.*

After a judge has recorded his opinion and referred the case to another judge, a petition objecting to the recorded opinion cannot be received.

69. After a Judge has recorded his opinion on a case and referred it to another Judge, it is contrary to Clause 3, Section 6, Regulation 26, 1814, which prescribes that no supplementary pleading shall be admitted without the express sanction of the court for the parties or their vakeels to file a petition objecting to the recorded opinion.—*Rules S. D. A. 11th Nov. 1836.*

But if the parties think a supplementary petition necessary to elucidate their case, it will be referred to the judge who decided the case, for his decision.

70. In the event, however, of the parties or their vakeels considering a supplementary petition necessary to elucidate their case, the petition shall be referred to the Judge who may have disposed of the case in the first instance, who after perusal thereof, will pass such orders, as on consideration of the contents of such supplementary pleading or representation, may in his judgment be required, for the ends of justice.—*Ibid.*

When two judges concur in amending a decree of the lower court, but differ as to the grounds, their judgment becomes final.

71. Two Judges of the Sudder dewanny adawlut concur in amending the decree of the Provincial court, but differ as to grounds. Final judgment passed notwithstanding.—*S. D. A. Sel. Rep. 5th March 1831, vol. 5, p. 96.*

A judge before concurring in the decision of the lower court may provide for submitting the case to another judge.

72. Under Clause 6, Section 2, Regulation 9, 1831, a Judge of the Sudder dewanny adawlut, confirming the decision of the lower court, may previous to signing his judgment provide for the submission of the case to another Judge.—*S. D. A. Sel. Rep. 29th Nov. 1834, vol. 5, p. 369.*

## SECTION VII

### *Reference of Original Suits or Petitions by the Sudder to the Zillah Court*

Cases in which the S. D. A. is empowered to refer original suit or complaints to the zillah or city court.

Suit or complaint to be dismissed, if the party preferring it shall refuse or omit to proceed in it for six weeks.

73. The Sudder dewanny adawlut is empowered to receive any original suit or complaint which may be cognizable in any Zillah or City court, and to command the Judge of such court, by a precept under the seal of the court, and attested by the Register, to receive the suit or complaint, and to proceed to hear and determine it, provided proof shall be previously made to their satisfaction that the Judge refused or omitted to proceed in it. If the plaintiff shall refuse or neglect to proceed in the suit or complaint, for the period of six weeks after the order of the Sudder dewanny adawlut may be received by the Zillah or City court and notified to the complainant, the Judge is authorised to dismiss it, notwithstanding the order of the Sudder dewanny adawlut. In such cases, the Judge, within one

Judge to notify the

week after the dismissal of the suit or complaint, is to certify to the Sudder dewanny adawlut under his hand and the seal of the court, that the suit or complaint has been dismissed, and the grounds of the dismissal.—*Reg. 6, 1793, Sect. 4, Cl. 1.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 5, 1803, Sect. 4, Cl. 1.*

74. The Sudder dewanny adawlut are vested with authority to receive any petitions respecting suits or matters that may be depending or have been decided, in any Zillah or City court, and provided it shall be proved to their satisfaction, that the petition was presented to the Judge of such court and that he refused or omitted to receive it, and to proceed on it,.....the court are empowered to issue a precept under the seal of the court, and attested by the Register, commanding the Judge to receive the petition, and to proceed respecting it according to the Regulations.—*Reg. 2, 1798, Sect. 7.—Benares Reg. 11, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 5, 1803, Sect. 2.*

dismissal of the suit to the S. D. A.

Cases in which the S. D. A. may receive petitions respecting suits and matters depending or decided in any zillah or city court, and how to proceed with such petitions.

## SECTION VIII.

### *Summary Appeals and Miscellaneous Petitions to the Sudder Court.*

75. It shall be competent to the Sudder dewanny adawlut to receive a summary appeal from the orders or decrees of the Provincial courts, [Zillah courts, or Principal Sudder Amceens in cases above 5000 rupees in value,] in all cases in which the latter may have refused to admit an original suit or appeal, regularly cognizable by them; or having admitted such suit, or appeal, may have dismissed it on the ground of delay, informality, or other default, without an investigation of the merits of the case.—*Reg. 26, 1814, Sect. 3, Cl. 2.*

Cases in which the S. D. A. may admit a summary appeal

76. In all the preceding cases, the summary appeal shall be preferred within the same limited period as is prescribed for the admission of regular appeals, and subject to the provisions contained in the following clauses. [The provisions of those clauses will be found at Chapter VII, Section 1.]—*Ibid, Cl. 5.*

Limitation of time for the admission of summary appeals.

77. The Sudder dewanny adawlut will admit a summary appeal from an order of nonsuit. Property claimed under separate deeds must be separately sued for. But any number of decree-holders, attaching the same property, may be sued in the same plant by a party laying claim to it.—*Rep. Sum. Cases, 31st Jan. 1842, p. 23.*

Summary appeal from an order of nonsuit admitted. Property claimed under separate deeds must be separately sued for. Several decree-holders attaching the same property may be sued in the same plant.

78. Though the zillah Judge's order in execution of a Moonsiff's decree is final, yet in a case in which the Moonsiff had omitted to provide in his decree for the payment of interest, and the Judge, on the decree-holder's applying to him to supply the omission under the Circular order of 11th September, 1839, rejected his application, it was held that as the order originated with the Judge, and was not passed in appeal from the order of a lower court, the Sudder dewanny adawlut were competent to receive an appeal therefrom, and either direct the Judge to allow interest, or reverse his decision and pass a modified order according to the Circular cited.—*Con. 1055, West. C. 17th Oct, Cal. C. 25th Nov. 1836.*

Case in which a summary appeal was received from a Judge's order passed in execution of a Moonsiff's decree though that order was, by law, final.

Where a judge had passed a summary order without having summary jurisdiction, the S. D. A. admitted a summary appeal.

79. A summary appeal was admitted from the summary order of a Judge under the provisions of Clause 1, Section 5, Regulation 5, 1830, in case of an application by a ryot, to settle his accounts with an indigo factory before the expiration of his contract, the Judge having no summary jurisdiction in such case.—*Con. 1130, Cal. and West. C. 9th Feb. 1838.*

## SECTION IX.

### *Regular Appeals to the Sudder Court—Suits in which Appeals may be preferred—General Rules.*

The Judges are forbidden to record on petitions any remarks which would encourage parties to apply to the S. D. A. in cases in which their interference is barred.

80. I am directed to request that the Judges will abstain from recording, on petitions presented to them or in their proceedings, any remarks calculated to hold out encouragement to parties to apply to the Sudder dewanny adawlut in cases in which its interference is barred by the Regulations, the practice alluded to being manifestly improper, as having a tendency needlessly to occupy the time of the court, and to put the applicants to much unnecessary trouble and expence.—*Cur. Ord. 1st April 1842.*

In all suits originally decided by the Judge, an appeal to lie to the S. D. A.

81. In all suits originally decided by the zillah or city Judge, an appeal shall lie to the Sudder dewanny adawlut.—*Reg. 5, 1831, Sect. 28, Cl. 3*

In all suits exceeding the value of Rs. 100, as regulated in Cl. 1, Reg. 5, 1831, which shall, under sec. 1 of this Act be referred to a P. S. A., the appeal shall be direct to the court of S. D. A., and shall be conducted as if it were an appeal from a zillah Judge, and any application for a review of the decision upon such judgment shall be made by the P. S. A., to the court of S. D. A.

82. And it is hereby enacted, that in all suits exceeding the amount or value specified in Clause 1, Section 18, Regulation 5, 1831, which shall, under the authority of Section 1 of this Act, be referred to a Principal Sudder Ameen, the appeal from the decision of such Principal Sudder Ameen shall be direct to the Court of Sudder dewanny adawlut, and shall be conducted in all respects according to the same rules as if it were an appeal from the decision of a zillah Judge to the said Court of Sudder dewanny adawlut, and any application for a review of judgment on such decision shall be made by the said Principal Sudder Ameen directly to the said Court of Sudder dewanny adawlut, and shall be conducted in all respects as if it were an application for a review of a decision of a zillah Judge.—*Act XXV. 1837, Sect. 4.*

Decrees adjudging forfeiture of lands, or fines for resistance of process, may be appealed to the S. D. A.

83. By Clause 3, Section 28, Regulation 5, 1831, all suits originally decided by the Judge of a zillah, into which the provisions of Regulation 5, 1831, have been introduced, are appealable to the Sudder dewanny adawlut, and an appeal would lie from his decree adjudging forfeiture of lands or fines, in cases of resistance or evasion of process, without reference to the amount of the annual jumma, or produce, or fine; and that in such cases the Judge should await the period of appeal to this court in the same manner as by the enactments quoted by you, they were directed to await an appeal to the Provincial court.—*Con. 780, Cal. C. 12th April, West. C. 10th May 1833.*

Appeal from the decision of the court of wards against a collector, guardian, or manager will lie to the sudder

84. The Court of Wards are to transmit copies of any judgments [for fraud] which may be given by them under this clause, against a Collector, guardian, or manager, to the Court of Dewanny adawlut of the zillah, and they shall be considered as judgments of the court, and be enforced accordingly. An appeal, however, shall lie from such judgments immediately to the Sudder dewanny adawlut, provided the petition of appeal be preferred to the Zillah court, or to the Sudder dewanny adawlut, or to the Court of Wards, within three months after the date of the decision; and the Sudder dewanny adawlut is

empowered to admit an appeal after that period, provided the petition of appeal be presented to that court, and the appellant shall shew good cause to its satisfaction, for not having preferred the appeal within the prescribed time.—*Reg. 10, 1793, Sect. 32, Cl. 2.*—*Benares Reg. 6, 1822, Sect. 2.*—*Ced. and Cong. Prov. Reg. 52, 1803, Sect. 36, Cl. 2.*

85. As by Clause 1, Section 28, Regulation 5, 1831, the decisions of zillah Judges in appeals from the decisions of Sudder Ameens are final; and as by Section 7, Regulation 7, 1832, the orders of the Judges in the execution of such decisions are also final; interlocutory orders passed by the zillah Judges on the hearing of such appeals are not appealable to the Sudder dewanny adawlut.—*Rules S. D. A. 13th Dec. 1833.*

Interlocutory orders passed by the Judges in hearing such appeals, final.

86. A resolution of the Court for expediting the disposal of appeals in the Sudder dewanny adawlut, is transmitted to you by this opportunity, and you are requested to cause the same to be made known by every possible means to those who are parties in cases pending in this court.—*Cir. Ord. 16th April 1841, par. 2.*

Resolution of S. D. A. for expediting the disposal of appeals

87. The Court having taken into consideration the great delay that occurs in filing the usual security bonds, the reasons of appeal, and the replies thereto, deem it proper to notify to parties and to their pleaders that they must proceed with greater expedition, and in strict conformity to the rules laid down on this subject by the Regulations of Government. Applications of parties or of their pleaders praying for the postponement of their cases, or soliciting a longer period for the preparation of their pleadings, cannot, except on very urgent and unexceptionable grounds, be complied with.—*Ibid.*

Applications of parties for postponing their cases, or for longer time, cannot be granted.

Exception.

88. The petition of appeal, pleadings, depositions, and exhibits in the Sudder dewanny adawlut, are to be numbered, marked, dated, and signed by the Register, in the same manner as the complaint, pleadings, depositions and exhibits are ordered to be numbered, marked, dated, and signed by the Register in the Zillah and City courts.—*Reg. 6, 1793, Sect. 28.*—*Benares Reg. 10, 1795, Sect. 2.*—*Ced. and Cong. Prov. Reg. 5, 1803, Sect. 28.*

Proceedings of the S. D. A. how to be numbered, marked, dated, and signed.

89. In matters which the Sudder dewanny adawlut may be empowered by any Regulation to try in the first instance, and also in appeals that may be preferred to the Court from decisions of the Provincial courts of appeal, (excepting as to hearing witnesses and receiving evidence,) the court is to proceed in the same manner, and with the like powers and authority, and subject to the same restrictions, limitations, and exceptions, as are prescribed to the Zillah and City courts.—*Reg. 6, 1793, Sect. 7.*—*Benares Reg. 10, 1795, Sect. 2.*—*Ced. and Cong. Prov. Reg. 5, 1803, Sect. 7.*

In trying matters in the first instance, and in appeals, the S. D. A. to be guided by the rules prescribed to the zillah and city courts.

Exceptions to the rule

90. A party having applied for a review of judgment, under the provisions of Clause 2, Section 4, Regulation 26, 1814, in a case open to appeal, but in which no appeal may have been preferred, and such application having been rejected, is not entitled of right to the deduction of the time, during which his application for a review was pending before the lower court, in calculating the period allowed him under the Regulations for preferring a regular appeal from the original decision; but where such party may plead as the reason of his not having presented his petition of appeal within the period prescribed by law, that the case was pending before the lower court on an application for a review of judgment, it will be the duty of the appellate

In calculating the period of appeal, the party is not entitled to a deduction of the time a petition for review was pending.

But the appellate court may take it into consideration.

court to take such plea into consideration, and to admit it or not, according as, under all the circumstances of the case, it may appear just and proper, in like manner with any other cause assigned for delay.—*Con.* 1127, 2d Feb. 1828.

[The rules regarding regular appeals from Zillah courts and Principal Sudder Ameen in cases above 5,000 rupees to the Sudder Court will be found at Chapter VII, Section 13]

## SECTION X.

### *Rules regarding the Petition of Appeal and Course of Procedure.*

The names of all the respondents must be inserted in the petition of appeal, and they must not be referred to by the words "oghya," &c. & others."

91. The preparation of cases in the Sudder dewanny adawlut for hearing, is often delayed by the omission of parties to insert in their petition of appeal, whether presented to the local courts or to the Sudder court, the names of *all* the respondents, (some of whom are referred to by the words "oghya" and others,) and the consequent inability to issue the prescribed process on the whole of them. As such practice is opposed to the rule of Section 10, Regulation 6, 1793, (Clause 3, Section 10, Regulation 5, 1803, for Ceded Provinces,) petitions of appeals deficient in the respect adverted to must be considered as incomplete and inadmissible under the Regulations, and not to be acted upon as in any way having the effect of a petition of appeal, with reference to the calculation of the period allowed for appeal.—*Civ. Ord.* 1st July 1842, *par.* 1.

If this defect be not supplied within the period of appeal, the appeal will be rejected as incomplete.

92. Whenever, therefore, in future an appellant shall omit the names of any persons who were opposed to him in the lower court, (without stating grounds for such omission,) he shall be allowed to supply the defect within the period of appeal, but in the event of neglect so to do, his appeal shall be rejected as incomplete.—*Ibid.* *par.* 2.

The Judges and P. S. A. will apprise appellants of the foregoing orders.

93. The Judges and Principal Sudder Ameen, to whom such incomplete petitions of appeal may be presented, for transmission to the Sudder court, will apprise the parties of the foregoing orders.—*Ibid.* *par.* 3.

The record of every case appealed must be sent in two months from the day of receiving the precept.

94. I am directed to request that you will be careful, in future, to cause the record of every case appealed to the Sudder dewanny adawlut, from decisions passed in your court, or that of the Principal Sudder Ameen, to be copied and despatched within two months from the date of receipt of a precept calling for the papers.—*Civ. Ord.* 16th April 1841, *par.* 1.

When the petition of appeal is filed with the decree of the lower court, the Deputy Register, will see if it be correct, and place it on the file of the court.

95. If the appellant shall file in person, or by vakeel, or authorised mooktar, his petition of appeal, together with copy of the decree of the lower court, within the period of appeal allowed by the Regulations, the Deputy Register will ascertain whether the petition be correct with regard to stamped paper and other particulars, and in the event of its being so, will place the appeal on the file of the court.—*Rules S. D. A.* 21st Jan. 1842,  *Sect.* 1.

Notice to be given to respondent—record of the case to be called for in two months.

96. On the appeal being registered on the file of the court the Deputy Register shall cause the usual notice to be served on the respondent, and the record of the case to be called for allowing two months from the date of the receipt of the roobukaree for its transmission by the Zillah court. The itelchameh and istiharnamah (the notice and proclamation) for the attendance of the respondent are to be sent simultaneously to the zillah Judge.—*Ibid.*  *Sect.* 2.

97. Should the petition of appeal contain also the reasons of appeal and be filed with a copy of the decree of the lower court, the Deputy Register will retain the case in his own office until the receipt of the returns from the Zillah court to the instructions forwarded under the preceding rule.—*Rules S. D. A. 21st Jan. 1842, Sect. 3.*

When the petition of appeal contains also the reasons, the dep. register will retain the case on his own file till the returns are received.

98. In the event of the petition of appeal being filed without the reasons of appeal and copy of the decree of the lower court, the Deputy Register shall allow to the appellant a period of six weeks from the date of filing the petition of appeal to file the reasons of appeal and a copy of the decree appealed from.—*Ibid, Sect. 4.*

If the decree of the lower court and reasons are not filed with the petition, 6 weeks allowed for doing so.

99. If the documents called for be filed within the time allowed by the preceding rule the Deputy Register will retain the case in his own office, until the receipt of the returns from the Zillah court to the instructions forwarded under Rule 2.—*Ibid, Sect. 5.*

If those documents are received in time, the dep. register will retain the case on his file till the returns are received.

100. In the event of the reasons of appeal and copy of the decree not being filed within the time prescribed, the Deputy Register, on the expiration of the time allowed, will lay the case before one of the Judges selected by the court as the referee in all cases from the Deputy Register.—*Ibid, Sect. 6.*

If those documents are not received in time, the matter will be referred to one of the judges.

101. In cases in which the petition of appeal has been filed in the Zillah court, the period of six weeks for filing the reasons of appeal and copy of the decree, shall be calculated from the date of the receipt of the petition in the office of this court.—*Ibid, Sect. 7.*

From what date the six weeks to be calculated when the petition was presented to the lower court.

102. In the event of the appellant applying for further time to file his reasons of appeal under the provisions of Section I, Act XXIX. of 1841, the Deputy Register will immediately lay the application, together with the petition of appeal, before the Judge selected as above stated.—*Ibid, Sect. 8.*

If the appellant apply for more time, the application will be referred to one of the judges.

103. When the case on the part of the appellant has been completed, and the necessary returns and record received from the Zillah court, the Deputy Register will allow fifteen days to the respondent to file his answer.—*Ibid, Sect. 9.*

When the case of the appellant is completed, 15 days to be allowed the respondent for his answer.

104. On the filing of the answer, or otherwise on the expiration of the time allowed for filing it, the Deputy Register will place the case on the list of cases ready for distribution. Should the answer be presented after the date fixed, but before the distribution of the case to any of the Judges, it shall be received by the Deputy Register, and filed with the record of the case.—*Ibid, Sect. 10.*

On his answer being filed, the case will be placed on the list of cases for distribution.

105. Applications for the admission of appeals, preferred after the expiration of the period allowed for appealing, shall be laid before the Judge selected as referee.—*Ibid, Sect. 11.*

Applications for appealing after the period allowed, will be submitted to the judge.

106. It will be the duty of the Deputy Register to note any irregularities committed by the lower courts in the preparation and endorsement of the copies of the decrees of their courts, and submit his report of such irregularities to the Judge selected as referee.—*Ibid, Sect. 12.*

The dep. register will report any irregularities in the lower courts to the judge.

107. In the event of the demise of a party to an appeal, the Deputy Register will take the necessary steps for causing the attendance of his or her representatives. Should this enquiry involve a question as to who are the representatives of the deceased, the Deputy Register will lay the case before the Judge selected as referee.—*Ibid, Sect. 13.*

Course to be pursued on the death of a party to an appeal.



Also where the legal representative of the deceased is a minor or lunatic.

108. In the event of the legal representative of a deceased party being a minor or lunatic, the Deputy Register will lay the case before the Judge as above, in order that the necessary measures may be taken for having a guardian appointed.—*Rules S. D. A. 21st Jan. 1842, Sect. 14.*

Course to be pursued if the representatives of the appellant should fail to attend, or to act, in six weeks.

109. Should the representatives of a party appellant fail to attend within the time allowed, for their appearance, or such representatives, or guardian appointed in the manner referred to in the preceding rule, neglect to proceed with the appeal within a period of six weeks from the date of admission to appear as representatives, or of appointment as guardian, as the case may be, the Deputy Register shall lay the case before the Judge selected as referee, to be dealt with according to the provisions of Act XXIX. of 1841.—*Ibid, Sect. 15.*

*For the modification of Act XXIX 1841, to be found in Act XVI. 1845, vide page 698 of this volume.*

Any delay on the part of the lower courts in executing requisitions will be brought to the notice of the judge of the sudder.

110. In the event of any delay on the part of the Zillah courts in the execution of the requisitions made to them by the Deputy Register, that officer shall bring the same to the notice of the Court to which the requisition has been made. Any continued delay after such second requisition he will report to the Judge selected as referee.—*Rules S. D. A. 21st Jan. 1842, Sect. 18.*

*For the rules regarding the dismissal of a suit on default, vide Chapter VII, Section 10, page 694.*

## SECTION XI.

### Vakeels.

Rules regarding vakeels.

111. The rules regarding vakeels in the Sudder Court are the same as those laid down for vakeels in the Zillah courts.—*Rule Chapter II, Sections 16 to 22, pages 153 to 173.*

Vakalutnamahs & mooktarnamahs need not be verified on oath.

112. Vakalutnamahs whether executed by principals or their attornies and agents, and mooktarnamahs under the authority of which vakalutnamahs are executed, shall not hereafter be required to be verified on oath. The responsibility in regard to all such documents being properly and correctly executed, shall rest entirely with the vakeels.—*Rules S. D. A 21st June 1843.*

Where only mooktars are employed, the mooktarnamah must be verified on oath.

113. The above rule does not apply to cases in which only mooktars or agents are employed. In all such cases the mooktarnamah shall be verified on oath as at present.—*Ibid.*

Where mooktarnamahs executed out of Calcutta should be verified; what mooktarnamahs may be verified at the sudder court.

114. All mooktarnamahs executed out of Calcutta for the purpose of being filed in the Sudder court, shall be verified in one of the offices of the district competent to make such verification, in which the document is executed, and no mooktarnamahs except those executed within the town of Calcutta, shall be verified at the office of the court.—*Ibid.*

What documents the appellant is allowed to file with his petition of appeal, & what must be given with a separate petition.

115. It has been the practice of the Sudder court to allow the appellant to file, with his petition of appeal, the mooktarnamah under which the vakalutnamah may be executed, and the security bonds for costs for staying or enforcing execution, as well as the vakalutnamah, and copy of the decree appealed against; all other documents are given in with a separate petition on the usual stamp —*Con. 961, Cal. C. 26th June, West. C. 7th Aug. 1835.*

116. Mooktars or agents who have cases in court, are required to attend regularly or send an urzee accounting for their absence, as long as their cases are pending ; failure to comply with these rules is punishable by exclusion from acting as agents.—*Rules S. D. A. 20th Nov. 1840.*

Rule regarding the punctual attendance of mooktars.

117. In the event of a vakeel being absent on leave, he shall return to the court on the day on which his leave may expire. Any deviation from this rule will render him liable to be struck off the list of vakeels.—*Rules S. D. A. 27th March 1840.*

Vakeels not returning on the day their leave expires, will be expunged from the roll.

118. In the event of a vakeel absent on leave, wishing to obtain additional leave of absence, he shall send in his application to the court for such additional leave, in time enough to enable him, in the event of such additional leave being refused, to rejoin the court by the expiration of the leave originally granted. Any prolonged absence without the sanction of the court previously obtained, in the manner above stated, will render a vakeel liable to be struck off the list of vakeels.—*Ibid.*

Rule regarding a vakeel's obtaining additional leave of absence.

119. When any pleader may apply for leave of absence for a period exceeding ten days, he shall give in a statement of the number of cases in which he is engaged, both singly, and jointly with another vakeel.—*Rules S. D. A. 15th July 1842.*

Vakeel must give a statement of the cases on hand when asking for more than 10 days' leave.

120. The nazir of the court is not at liberty to receive applications for leave of absence from the vakeels ; but all such applications must be given in to the Register, who will lay them before the court.—*Ibid.*

All applications for leave by vakeels to be made to the register.

121. Vakeels and agents under Regulation 12, 1833, are allowed to enter the room appropriated to the use of the mohurrirs of the court, for the purpose of inspecting the proceedings in cases in which they are engaged, presenting petitions, pleadings, &c.—*Rules S. D. A. 15th Feb. 1834.*

Vakeels and agents may enter the room appropriated to mohurrirs.

122. Each vakeel and agent is authorized to nominate a mohurrir, for whose conduct he will be responsible, who will be allowed access to the record room for the purpose of taking copies of such papers as may be required by them.—*Rules S. D. A. 13th Feb. 1834.*

Each vakeel and agent may appoint a mohurrir to copy papers.

123. Vakeels and their mohurrirs filing vakalatnamahs and other papers in the office of the samshtadar of the Sudder dewanny adawlut, shall sign their entry in the book kept by the officer appointed to receive such papers, in proof that they have filed them.—*Rules S. D. A. 9th Jan. 1835.*

Vakeels and mohurrirs filing papers in the samshtadar's office, will sign the entry in the book.

124. Vakeels and agents appointed under Regulation 12, 1833, are required to write (under their own responsibility) on all petitions presented by them in cases or matters which are pending before, or belonging to, any particular Judge, the name of the Judge, in order that it may be referred to him direct, without the necessity of its going before the Judge conducting the duties of the miscellaneous department.—*Rules S. D. A. 8th Aug. 1834.*

Vakeels and agents will write on all petitions the name of the judge before whom the case is pending.

125. On any case being decided in the Sudder dewanny adawlut, in which the Government is a party, the presiding Judge shall add to his order a note specifying the amount due to the Government pleader, to afford that officer the means of recovering his fees from the Government direct through the Revenue Board, or other authority, who may have preferred or defended the appeal.—*Ibid.*

When a case is decided in which govt is a party, the judge will add in a note the amount due to the govt pleader.

The treasurer will not pay to vakeels the vakeel's or stamp fees which are returned, unless he has specific permission to receive them

126. In cases in which the court have awarded to vakeels a portion only of the fees deposited, and ordered that the remainder be returned to the parties ; or in which a portion or the whole of the value of the stamped paper on which petitions of appeal, special, &c. have been written, was returnable to the parties under the certificate required by Article 8, Schedule B, Regulation 10 of 1829, the treasurer of the court is prohibited from paying money under the above circumstances to any vakeel or mooktar, unless he shall be authorised to receive it by a special clause in his vakalutnamah or mooktainamah ; and that when no such authority is produced, the money shall remain in deposit until the party entitled to receive it, shall apply to the court for an order for payment, and such order be obtained.—*Rules S. D. A. 3d Jan. 1834.*

Vakeels are responsible for the correctness of all representations made by them

127. Vakeels of the court to be held responsible for the correctness of all representations made by them to the court —*Rules S. D. A. 8th July 1842*

Written notice to a vakeel or mooktar of an order of the deputy register, a sufficient intimation of its having been passed

128. A written notice to a vakeel or mooktar engaged in a case, of any order passed by the Deputy Register, shall be considered as sufficient intimation to such vakeel or mooktar of such order having been passed, such notice shall not of course be necessary when the order may have been passed in the presence of the vakeel or mooktar.—*Rules S. D. A. 21st Jan. 1842, Sect. 24.*

Wilful neglect of a pleader to attend the deputy register subjects him to dismissal.

129. Wilful neglect on the part of any pleader or mooktar attached to the court to attend the office of the Deputy Register, shall subject such pleader or mooktar to dismissal from his situation.—*Ibid, Sect. 25.*

Made in which information of the death &c. of a vakeel is to be given

130. Information of the death, suspension, resignation, or removal of a pleader of the court is to be given by the Deputy Register in the manner prescribed by Clause 3, Section 18, Regulation 27, 1814.—*Ibid, Sect. 16*

If an appellant neglects to appoint another vakeel in six weeks it will be reported to the judge.

131. Should an appellant neglect to proceed with his case by the appointment of another vakeel, or by failure to attend in person within the period allowed by Clause 3, Section 18, Regulation 27, 1814, the Deputy Register shall lay the case before the Judge selected as referee, to be dealt with according to the provisions of Act XXIX. of 1841.—*Ibid, Sect. 17.*

The pleaders of the S. D. A. court may present petitions to the nizamat court.

132. The pleaders of the Sudder dewanny adawlut may present petitions to the Nizamat adawlut.—*Con. 563, 18th June 1830.*

*Vide also the Rules in Circular order. 2d December, 1842, Nos. 275 to 278, Chapter II, page 188*

## SECTION VII

### *Witnesses and Evidence in the Sudder Court*

Cases in which the S. D. A. is empowered to take new evidence in appeals, or to refer them back for further evidence to the provincial courts

133. The Sudder dewanny adawlut is empowered in cases of appeal, in which it shall appear to them that the original suit has not been sufficiently investigated in the Provincial court of appeal, [lower court] or for any other cause that may be deemed reasonable by the court, either to receive such further evidence as they may think necessary for the just determination of the suit, and to give judgment upon it; or, to refer the suit back to the [lower] court in which it originated, accompanied by such special directions to the [lower] court with regard to the new evidence they are to receive respecting it, as may be deemed by the court most conducive to justice, and the convenience of the parties

and witnesses. But in every case in which the Sudder dewanny adawlut may exercise the power above vested in them by this section, they are to enter upon the record of the trial their reasons for having exercised it. In cases in which the court may judge it proper to receive such further evidence themselves, they are empowered, according as they may deem most conducive to justice (respect being had to the nature of the cause and the evidence) either to examine the witnesses to be produced, *vivâ voce*, in open court, first causing the witnesses to be sworn, and their depositions to be reduced into writing, and signed by the deponents respectively; or, to authorise their Register to swear the witnesses and take their depositions, and to cause the deponents to sign them, and to authenticate them with their signatures. The Register in such case is to examine the witnesses in the presence of both parties, of their vakeels, who are to be at liberty to put any questions to the witnesses that they may think proper, and the questions, with the answers to them, are in the same manner to be reduced into writing, signed, and authenticated. But if due notice be given to the parties or their vakeels, of the examination of any witness or witnesses before the Register, and he or they shall not attend at the time of the examination, the Register is to proceed in the examination as before directed, and the depositions are to be received as good and authentic evidence — *Reg. 6, 1793, Sect. 16.*—*Benares Reg. 10, 1795, Sect. 2.*—*Ced. and Cong. Prov. Reg. 5, 1803, Sect. 16.*

S. D. A. to state their reasons on the record of the trial, whenever they may exercise the powers above vested in them.

Courts empowered to hear the evidence in the cases above specified *vivâ voce*, or to order their register to take it.

134. Where witnesses may be women of the description specified in Section 6, Regulation 4, 1793, or shall reside out of the jurisdiction of the court, and at a distance from it exceeding fifty coss, the court may grant such commissions as the Zillah and City courts are authorised to grant for the examination of such witnesses upon similar occasions. And the Sudder dewanny adawlut may issue such commissions to creditable women, and send such letters to the [lower] courts for the examination of witnesses, in the cases in which the Judge of the Zillah or City courts are authorized to send such commissions and letters. —*Reg. 6, 1793, Sect. 17.*

Or direct their evidence to be taken by commission.

*The rules relative to the examination of absent witnesses, given at Chapter III, Section 22, page 297, will also be applicable in such cases*

135. If a witness duly summoned shall not attend, or attending shall refuse to be sworn or give evidence, or to subscribe his deposition, or if such witness, or any person shall be guilty of wilful or corrupt perjury in a cause depending in the court, or any contempt of court in open court, the Sudder dewanny adawlut are to proceed with such witness or person in the same manner as the Provincial courts are authorised to deal with witnesses or persons in like manner offending. —*Reg. 6, 1793, Sect. 18.*—*Benares Reg. 10, 1795, Sect. 2.*—*Ced. and Cong. Prov. Reg. 5, 1803, Sect. 18*

S. D. A. how to proceed where witnesses do not attend, or refuse to be sworn or to give evidence, or sign their depositions, or any persons are guilty of contempt of court, or perjury.

136. If the Judges of the Provincial courts, or of the Court of Sudder dewanny adawlut, or any single Judge of those courts respectively, in cases within the competency of a single Judge, shall be of opinion that there are sufficient grounds, on any civil proceeding before them for bringing a party or witness to trial, on a charge of perjury, or subornation of perjury, they shall record their sentiments to that effect, and at the same time direct whether the party accused shall be admitted to bail, or kept in custody. —

And in cases where in the proceedings may be held before the judges of the provincial courts, or of the court of S. D. A., or any single judge of those courts.

an authenticated copy of the order so passed, with the whole of the original papers relative to the case, shall then be transmitted to the proper zillah or city Magistrate, for the purpose of being proceeded upon as stated in the preceding clause.—*Reg.* 17, 1817, *Sect.* 14, *Cl.* 3.

Rules regarding the evidence of witnesses required by the S. D. A. in summary cases.

137. The Court, having frequent occasion, when hearing summary appeals, to require parties to substantiate their assertions by the evidence of witnesses, are pleased to establish the following rule of practice, for the observance of the civil Judges, and officers in charge of the current duties of Judge's offices.—*Cir. Ord.* 28th March 1845.

Mode in which the zillah judge will proceed to take the depositions of such witnesses.

138. Whenever a petition may be presented in any Zillah court, with a copy of a roobukaree of the Sudder dewanny adawlut, authorising a party to prove any point which he may have asserted, it will be the duty of the Judge, or officer in charge of his office, without requiring any express orders, to take the depositions of the witnesses who may be produced before him, and record his opinion, as to whether the point in question has been proved or not, allowing the applicant to take an authenticated copy of his roobukaree.—*Ibid.*

A document dishonestly suppressed by a party, & directly contradicting his plea, will not be received by the S. D. A.

139. The Sudder dewanny adawlut will not receive in evidence a document dishonestly suppressed by a party in a suit, and directly contradicting the plea on which his original defence rested.—*S. D. A. Sel. Rep.* 25th Nov 1805, vol. 1, p. 112, *Note.*

The S. D. A. will receive fresh evidence in a suit on clear proof that it could not be discovered before the decree of the lower court.

140. The Court of Sudder dewanny adawlut will receive fresh evidence in appeal, on clear and unquestionable proof that it could not be discovered until after the decree of the Provincial court.—*S. D. A. Sel. Rep.* 1st Sept. 1806, vol. 1, p. 159.

Decrees of the supreme court are admissible as evidence in the S. D. A. on plain paper.

141. Decrees of the Supreme Court are admissible as evidence in the Sudder dewanny adawlut on plain paper.—*Rep. Sum. Cases*, 9th April 1810, p. 30.

## SECTION XIII.

### *Process of the Court.*

All process of the S. D. A. (with the exceptions herein specified) to be issued thro' the provincial courts of appeal.

142. All process, both to parties and witnesses, and every rule or order for the execution of a decree or final order, and every other order whatever, which may issue from the Sudder dewanny adawlut, is to be written or printed in the Persian and Bengal languages, in Bengal and Orissa : and in the Persian language, and the Hindoostanee language and Nagree character, in Behar, and sealed with the seal of the court, and signed by the Register.—*Reg.* 6, 1793, *Sect.* 13.—*Benares Reg.* 10, 1795, *Sect.* 4.—*Ced. and Cong. Prov. Reg.* 5, 1803, *Sect.* 13.

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143. All such process, rules, and orders, which are to be served or executed on any parties, witnesses, or persons, (exclusive of the parties, vakeels, or persons, in actual attendance on the court.) are to be directed to the Provincial court of the division in which the cause of action shall originally have arisen, or in which the lands may be situated, or the parties may be or reside. Every such process, rule, and order, is to limit a certain time in which it is to be served, executed, and returned to the Sudder dewanny adawlut.—*Ibid.*

144. I am directed by the Sudder dewanny adawlut to inform you, that it is the intention of the Court, in pursuance of Section 13, Regulation 6, 1793, to issue to your court, and the Zillah and City courts within your division, all process to parties and witnesses, and all decrees and orders of the court in causes, in the Native languages, but enclosed in an English precept. You will accordingly adopt a similar mode of communication with the court.—*Cir. Ord.* 20th April 1801.

Mode in which the S. D. A. intends to issue all processes to parties and witnesses, and all decrees and orders.

145. In all cases in which process, either to a party or witness, and all process whatever, and every rule or order, for the execution of any decree or final order, or any order relating to a cause depending in the Sudder dewanny adawlut, which may be directed by such court to any Provincial court of appeal, the court to which the process may be directed, is to execute the order contained in the process, rule, or order, and return it so executed within the time limited, or return to the Sudder dewanny adawlut good and sufficient reason why it has not been served or executed.—*Reg. 6, 1793, Sect. 14.*—*Benares Reg. 10, 1795.*—*Ced. and Conq. Prov. Reg. 5, 1803, Sect. 14.*

Process of the S. D. A., how to be served by the provincial courts

To return the process executed, or reasons why it has not been executed.

146. You will be careful yourselves, and instruct the several Judges within your division to be careful on their part, to insert no information certified by them to the court in the cases in question, in English certificates or returns; but to let such information be entirely comprehended in the extracts from their proceedings, and the original documents to which the extracts may relate, so that the whole matter which it may be necessary to lay before the court may be understood, without any reference to the English certificate or return which accompanies.—*Cir. Ord.* 25th June 1801, par 2.

How the lower courts are to certify to the S. D. A., the information it requires

147. When any process, rule, decree, or order for the execution of any decree or final order, or any order whatever, shall be transmitted by the Sudder dewanny adawlut to a [lower] court to be served or executed, the return to such process, rule, order, or decree, is to be made by the court, either by endorsement on the process, rule, order, or decree, or to be written on a paper firmly annexed to it, and, if the return be made in the last mentioned manner, there is to be an endorsement on the process, rule, order, or decree, referring the Sudder dewanny adawlut to the return contained in such annexed paper, and the court is to cause a copy of the process, rule, order, or decree, together with the return to it, to be deposited among the records of the court.—*Reg. 6, 1793, Sect. 14.*—*Benares Reg. 10, 1795.*—*Ced. and Conq. Prov. Reg. 5, 1803, Sect. 14.*

Form and manner in which the return is to be made.

Court to cause a copy of the process and return to be deposited amongst the records of the court

148. And in all cases in which the Sudder dewanny adawlut may transmit any order or process to be served or executed by a [lower] court, against a party in a cause, and the party on whom it is to be served or executed, is not after diligent search, to be found or shall have absconded, or shut himself up in his own or any house or building, or retired to any place so that the process cannot be served upon him, the court to which the process may be directed is to cause to be fixed up in some conspicuous part of the room in which the court may be held, a writing (in the Persian and Bengal languages, if it be in Bengal or Orissa, and in the Persian language, and the Hindoostanee language and Nagree character, if it be in Behar) containing a copy of the order or process, and a notice

Court how to proceed in case any such process cannot be served upon the party in consequence of his absconding or otherwise avoiding it.

Court to fix up a writing in the court room, & at the place of residence of the party

What the writing is to contain.

that if the party shall not obey the exigence of it within the time limited, the Sudder dewanny adawlut will, without further notice, process, or order, proceed *ex-parte* to hear, try, and determine the cause to which such process or order may relate; and the court is likewise to cause a copy of such writing to be fixed up with all practicable despatch on the outer door of the house in which the party may have commonly dwelt, or in some conspicuous place in the village in which he may have usually resided, and to return to the Sudder dewanny adawlut in the manner before directed how he has executed the process.—*Reg. 6, 1793, Sect. 14.—Benares Reg. 10, 1795.—Ced. and Conq. Prov. Reg. 5, 1803, Sect. 14.*

S. D. A. to proceed *ex-parte*, when the provincial court shall report that a party has absconded, or was not to be found after the observance of the forms herein directed

149. If a (lower) court to which any process, rule, or order of the Sudder dewanny adawlut, may be transmitted for the purpose of being served or executed on any party, shall return that the party have absconded, or shut himself up in his own or any house or building, or retired to any place so that the process could not be served upon him; or that he was not after diligent search to be found, and that they had caused the writing to be fixed up, in the places and manner directed: and the party shall not appear and obey the exigence of the process, rule, or order, the Sudder dewanny adawlut is to proceed *ex-parte* to try and determine the cause in which the process, rule, or order, shall have issued, in the same manner as if the party had appeared, and obeyed the exigence of the process.—*Reg. 6, 1793, Sect. 15.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Conq. Prov. Reg. 5, 1803, Sect. 15.*

Execution of the process of arrest, either civil or criminal, within the local limits of the crown courts

150. And, whereas, it is expedient that the Sudder dewanny adawlut, and Nizamut adawlut, or other Provincial courts, however denominated, exercising the highest jurisdiction within the provinces respectively subject to the Governments of Fort William, Fort Saint George, and Bombay, should have power and authority to execute process of arrest, either civil or criminal, within the town of Calcutta and Madras, and the town and island of Bombay, notwithstanding the jurisdiction of His Majesty's courts established at those places respectively; be it, therefore, enacted, that it shall and may be lawful for the said Court of Sudder dewanny and Nizamut adawlut, or other Provincial courts aforesaid, to execute or cause to be executed upon all persons subject to the jurisdiction of such courts respectively, all manner of lawful process of arrest, within the respective limits of the towns of Calcutta and Madras, and of the town and island of Bombay, in the same manner as the said courts respectively may, by virtue of any power now vested, or hereafter to be vested in them, lawfully execute, or cause to be executed, such process in any place situate without the said limits: any Act, Charter, or other matter or thing whatsoever to the contrary notwithstanding, provided always, that all such process which shall be executed within the limits aforesaid, shall be in writing, and shall have underwritten or endorsed thereon, or otherwise annexed thereto, a translation thereof, or of the substance thereof, in the English language and character, signed by one of the Judges of the court from whence the same shall issue.—*Act 53, George III. Chap. 155, Sect. 113.*

## SECTION XIV.

*Precepts and Returns.*

151. The Court, having had occasion to notice instances of very great delay on the part of the zillah and city Judges in making returns to precepts issued to them, direct me to call your particular attention to the subject; and to desire that whenever you may be unable to execute fully any order or process within the time limited, you will submit, with a certificate, a report of what has been done, and of what remains to be done, and of the period by which you will submit a full return, transmitting a further definite report in case the period first certified be unavoidably exceeded.—*Cir. Ord. Cal. and West. C. 25th July 1834, par. 1.*

The lower courts, when unable fully to execute a process of the S. D. A. within the time limited, will submit a report with a certificate. What the certificate will contain

152. The particular attention of the court is directed to the reduction of their heavy arrears of pending suits, and to expediting the general business before them. Their utmost endeavours must however prove ineffectual, unless the zillah and city Judges co-operate with them by paying prompt attention to their orders. They, therefore, direct me to state, that they must hold you personally responsible for any delay which may in future occur in your office not satisfactorily reported and explained.—*Ibid, par. 2.*

The lower courts will be held personally responsible for any delay that may occur in their offices not satisfactorily explained.

153. With a view to obviate the delay which occurs in registering certificates, containing partial returns to the Court's precepts, in consequence of their not bearing the numbers of the precept register, which are always to be found in the precepts themselves; I am directed to request that you will in future, in addition to the number of the cause in which the precept is issued, and names of the parties, invariably insert the number of the precept register agreeably to the accompanying form, whenever you may have occasion to transmit such certificate in reply to precepts issued since the 1st of April last.—*Cir. Ord. Cal. and West. C. 17th July 1835.*

How the certificates which are sent from the lower courts in reply to precepts are to be numbered.

154. With a view to secure uniformity in respect to the form of communications to the court, connected with their precepts not requiring returns, but in which the zillah Judge may wish to communicate to the court some information or remarks, or in which further instructions may be requisite; I am directed by the Court of Sudder dewanny adawlut and Nizamut adawlut to transmit to you the accompanying form (No. 9,) for adoption, whenever you may find it necessary to make references to them, connected with the precepts in question.

Form in which the lower courts will make references to the S. D. A. connected with the precepts sent to them.

## No. 9, CERTIFICATE.

## No. 9, Certificate.

*To the Register of the Court of Sudder Dewanny (or Nizamut) Adawlut, Fort William (or Allahabad)*

With reference to the precept of the ——— Adawlut, not requiring a ——— return, dated the ——— of ———, convey an extract of the Court's proceedings of the ——— of ———, held before Mr. ———, in the case noted in the margin, I hereby certify the accompanying extract from my proceedings of the ——— of ———. *Here briefly state the object of the reference.*

Given under my hand and the seal of the court, this ——— day of ———, 183—.

——— Adawlut, }

A. B., Judge,

The ——— of ——— 183—.

(or as the case may be.)

—*Cir. Ord. Cal. and West. C. 4th Nov. 1836.*



Precepts will be sent direct to the P. S. A. from the S. D. A.; and returns will be made direct to the sudder.

155. Precepts from this Court will be sent direct to the Principal Sudder Ameen, [in suits above 5000 rupees,] and all returns unless specially directed otherwise, will be submitted by the Principal Sudder Ameen to this Court with the usual certificate.—*Cir. Ord. Cal. and West. C. 23d Feb. 1838, par. 1.*

The certificates of the P. S. A. need not be drawn up in English.

156. With reference to the rule contained in paragraph 8 of the Court's Circular orders, No. 4 of the 23d February last, I am directed to acquaint you that the certificates which the Principal Sudder Ameens are hereby required to forward with their returns to the Court's precepts, need not be drawn out in English when those officers are not acquainted with that language, you are requested to inform the Principal Sudder Ameen of your district accordingly.—*Cir. Ord. West. C. 20th July, Cal. C. 10th Aug. 1838.*

The P. S. A. will use the same form which is prescribed for the practice of the zillah courts in forwarding their certificates of appeal, substituting Oordoo for English

157. The Court observe that in forwarding their certificates of appeal, and in making their returns to the precepts of the Court under Act XXV. 1837, the Principal Sudder Ameens are not guided by any prescribed forms, and that much want of uniformity consequently prevails. This diversity of practice being found inconvenient, the Court are pleased to direct that those officers shall be required to conform to the practice of the Zillah courts in this matter, substituting the Oordoo for the English language.—*Cir. Ord. Cal. and West. C. 10th Sept. 1839, par. 1.*

*Consolidated Rules regarding Precepts and Returns, promulgated by the Sudder Court.*

Form in which precepts will be drawn out

158. All precepts shall be drawn out according to the annexed forms (Nos. 1, 2, 3, 4, 6, and 7.)—*Cir. Ord. Cal. and West. C. 6th Feb. 1835, par. 1.*

The order for issuing a precept will state if a return is required, and within what period.

159. All orders directing the issue of precepts shall state whether a return is required, and within what period.—*Ibid, par. 2.*

Date from which the period will be calculated.

160. The period shall be calculated from the date of the despatch of the precept from this office.—*Ibid, par. 3.*

What date the precepts and returns will bear.

161. Precepts and returns shall bear the date of despatch, not the date of proceedings which accompany them, as heretofore; and the subordinate courts will be expected to despatch their returns within the period allowed.—*Ibid, par. 4.*

Course of proceeding in the sudder court after the judge has signed a chutteh directing the issue of a precept.

162. When a Judge of the Court has signed a *chutteh*, directing the issue of a precept, it shall be the duty of his paishkar to prepare a copy of the roobukaree, duly attested by his signature, together with such other papers as should accompany the same, and to send them by a mohurrir, to the English clerk in the precept department, within seven days from the date on which the *chutteh* was signed by the Judge. The roobukaree shall bear a list of the accompanying papers at the foot of it, and the paishkar shall be responsible that they are correct and complete.—*Ibid, par. 5.*

Duties of the English clerk.

163. The English clerk will note on each proceeding the date of receipt, and after preparing the precepts, will submit them for the Register's signature; he will then enter them in the proper books, and will despatch them on the same day if possible; if not despatched till the next day, or later, the date of the receipts shall be altered to correspond with that of despatch.—*Ibid, par. 6.*

164. If the officer to whom the precept may be addressed find it impracticable to send a complete return within the prescribed period, he will transmit a proceeding with a certificate according to the annexed form, (No. 5,) stating the reason, and the additional period which he may require to carry the court's orders into effect.—*Cir. Ord. Cal. and West. C. 6th Feb. 1835, par. 7.*

The duty of the officer to whom the precept is addressed, if he cannot send a complete return within the prescribed period.

165. Such returns and certificates when received in this office shall, after having been endorsed and entered in the proper books, be sent by the precept clerk to the paishkar of the Judge by whom the precept was issued, who will note on each the date of receipt, and bring it forward in the usual course.—*Ibid, par. 8.*

Course of procedure after the returns and certificates have been received in the sudder court.

166. If the period allowed in a precept, together with the number of days occupied by the letter *dawk*, expire before a return or explanatory proceeding and certificate be received, the Register shall send a letter calling for explanation within a specified term : should this term also expire without receiving a reply, the circumstance shall be brought to the notice of the Judge who issued the order, for such further measures as he may deem advisable.—*Ibid, par. 9.*

Duty of the register if the period allowed in a precept together with the days required for the post, expire before a return or explanatory proceeding is received.

167. The officer by whom a return or certificate may be sent will cause a list of the papers which accompany it to be written at the foot of the roobukaree.—*Ibid, par. 10.*

A list of the papers sent with the return or certificate will be written at the foot of the roobukaree.

168. If the papers, &c. which should accompany a precept or return are too heavy for the letter *dawk*, they shall be sent by *dawk banghy*, with a note stating the case and precept or return to which they belong : the precept or return itself with the proceedings of the court being sent as usual by the letter *dawk*—*Ibid, par. 11.*

Course of procedure if the papers, which should accompany a precept are too heavy for the letter *dawk*

169. The precept clerk will at the close of each week, submit to the Register a list of unanswered precepts, and letters, to which returns are due.

The precept clerk will submit weekly a list of unanswered letters and precepts.

*List of precepts, returns, and certificates—Sudder Dewanny Adawlut.*

No. 1. Precept directing the execution of a decree ; with a return on the back.

No. 2. Precept issued on the admission of an appeal, directing that summons be issued to the respondent, &c with a return.

No. 3. Precept issuing any other order of the court, with a return.

No. 4. Precept with an order of the court calling for no return.

No. 5. Certificate to be submitted when a full return to precept Nos. 1, 2, or 3 cannot be submitted within the prescribed period.—*Ibid, par. 12.*

No. 1, Precept.

No. of Precept Register, ———.

No. 1, Precept

SUDDER DEWANNY ADAWLUT.

No. of suit, — —.

Year in which the decree was passed, ———.

—— Appellant, *versus* ———, Respondent.

To A. B, Esq., Judge of Zillah ———.

Herewith you will receive the decree of the Sudder dewanny adawlut, passed in this cause on the ——— of ———, 183—, copy of a petition from the ———, and an extract from the Court's proceedings of the ——— of ———, 183—, held before Mr. ———, to the orders contained in which you are required to conform : returning this

PRESENT  
—, Esq  
Judge

precept with the decree duly executed, or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof, on or before the — day of —, 183—.

By order of the Court of Sudder dewanny adawlut,  
*Fort William,*  
*The — of —, 183—.* }

C. D., *Register.*

*Return.* (To be endorsed on preceding.)

*Dewanny Adawlut, Zillah (or City) —.*

I, A. B., Judge of zillah —, do hereby certify, that the orders contained in this precept have been duly carried into execution

Given under my hand and the seal of the court this — day of —, 183—.

*Dewanny Adawlut,* }  
*The — of —, 183—.* }

A. B., *Judge.*

No 2, Precept

No. 2, *Precept.*

No. of Precept Register,

SUDDER DEWANNY ADAWLUT.

No. of appeal, —.

Year of institution, —.

—, Appellant, *versus* —, Respondent.

To A. B., Esq., *Judge of Zillah* —.

PRESENT  
*Esq*  
*Judge*     The Court of Sudder dewanny adawlut having admitted an appeal in this cause against the decree passed by Mr. —, Judge of —, on the — of —, 183—, you will receive herewith a notification to be served on the respondent, and an extract from the court's proceedings of the — of —, 183—, held before Mr. —, to the orders contained in which you are required to conform, returning this precept duly executed, or good and sufficient reason why it has not been executed, and what you may have done in pursuance hereof, on or before the — day of —, 183—.

By order of the Court of Sudder dewanny adawlut,  
*Fort William,* }  
*The — of —, 183—.* }

C. D., *Register.*

*Return.* (To be endorsed on the preceding.)

*Dewanny Adawlut, Zillah (or City) —.*

I, A. B., Judge of zillah —, do hereby certify, that the orders contained in this precept have been duly carried into execution.

Given under my hand and the seal of the court, this — day of —, 183—.

*Dewanny Adawlut,* }  
*The — of —, 183—.* }

A. B., *Judge.*

No. 3, Precept.

No. of Precept Register, ———.

No. 3, Precept.

SUDDER DEWANNY ADAWLUT.

No. of suit, ———.

Year, ———.

———, Appellant, or Petitioner, *versus* ———, Respondent.

To A. B., Esq., Judge of Zillah ———.

PRESENT  
—, Esq.  
Judge.

Herewith you will receive (here specify the papers sent) and an extract from the proceedings of the Court of Sudder dewanny adawlut of the ——— of ———, 183—, held before Mr ———, to the orders contained in which you are required to conform; returning this precept duly executed, or good and sufficient reason why it has not been executed, with a report of what you may have done in pursuance hereof, on or before the ——— day of ———, 183—.

By order of the Court of Sudder dewanny adawlut,

Fort William, }

The ——— of ———, 183—, }

C. D., Register.

Return 3 (To be endorsed on the preceding.)

Dewanny Adawlut, Zillah (or City) ———.

I, A. B., Judge of zillah ———, do hereby certify, that the orders contained in this precept have been duly carried into execution.

Given under my hand and the seal of the court, this ——— day of ———, 183—.

Dewanny Adawlut, }

The ——— of ——— 183—, }

A. B Judge

No. 4, Precept

No. 4, Precept.

SUDDER DEWANNY ADAWLUT.

No. of suit, ———.

Year, ———.

———, Petitioner or Appellant, *versus* ———, Respondent

To. A. B., Esq., Judge of Zillah ———.

PRESENT  
—, Esq.  
Judge.

Herewith you will receive, for your information and guidance, an extract from the proceedings of the Court of Sudder dewanny adawlut of the ——— of ———, 183—, held before Mr. ———, and a copy of a petition from ———, (if other papers are sent they will be mentioned.)

By order of the Court of Sudder dewanny adawlut,

Fort William, }

The ——— of ———, 183—, }

C. D., Register.

No. 5, Certificate.

No. of Precept Register, ———.

No. 5, Certificate.

DEWANNY ADAWLUT.

No. of the cause in which the precept is issued, ———.

To the Register of the Court of Sudder Dewanny Adawlut, Fort William.

With reference to the precept of the Sudder dewanny adawlut, dated the ——— of ———, 183—, covering an extract from the court's proceedings of the ——— of ———, 183—, held before Mr. ———, in the case noted in the margin, I hereby certify the accompanying extract from my proceedings of the ——— of ———, 183—, containing a

VERACUS

return to the said precept ; and that I propose to submit a further (or full) return on or before the — of —, 183—.

Given under my hand and the seal of the court, this — of —, 183—

*Dewanny Adawlut,* )  
The — of —, 183—. }

A. B., Judge.

—*Cir. Ord. Cal. and West. C. 6th Feb. 1835.*

## SECTION XV.

### *Neglect of Duty, and Resistance and Disobedience of the Court's Orders by the Lower Court.*

Judge of the provincial courts liable to be suspended by the S. D. A., for refusing or omitting to obey, or to conform to, their process or requisitions.

S. D. A. to report to the G. G. in C., the suspension of judges under this section within 10 days.

170. If any [lower] court, to whom any process, rule, or order whatever may be directed, shall wilfully disobey, or neglect to perform the commands contained in it, or make a false return, the Judges of the court who may commit such offence, shall be liable to be suspended from their office, by the Sudder dewanny adawlut. If the Sudder dewanny adawlut shall suspend any Judge of a Provincial [lower] court under this section, they are to notify the suspension to the Governor General in Council within ten days after it may take place, together with the cause of it, and certify under the seal of the court, the proceedings, depositions, and exhibits, and all other matters which may be necessary to enable the Governor General in Council to pass a determination upon the suspension, and to transmit to him on his requisition, any further papers and proceedings respecting the cause which he may deem necessary for his information.—*Reg. 6, 1793, Sect. 13.—Benares Reg. 10, 1795, Sect. 4.—Ced. and Comp. Prov. Reg. 5, 1803, Sect. 13.*

In what cases court to report to the G. G. in C.

171. The Court of Sudder dewanny adawlut is directed to report to the Governor General in Council, all instances of wilful neglect of duty or aggravated misconduct by a covenanted servant of the Company, employed in any of the Civil courts, whether in a judicial or ministerial capacity : and whether such neglect or misconduct may have been reported to the Court of Sudder dewanny adawlut, by a Provincial, Zillah, or City court or may otherwise appear from the proceedings and papers before the court. But if the case should appear to the court to involve an error of judgment only, or a slight default for which an admonition from the court may be deemed a sufficient correction, the Court of Sudder dewanny adawlut, in the former case, is authorised to notice the error for the information and guidance of the party who may have committed it ; or, in the latter case to advise him of his default, and to admonish him accordingly.—*Reg. 2, 1801, Sect. 7.*

Errors of judgment or slight defaults how to be corrected

[The penalties for resisting any process, order, rule, or decree of the Sudder court are the same as those enacted for similar resistance of the process of the Zillah courts, which will be found detailed in Chapter III. Section 14.]

## SECTION XVI.

*Special Appeals to the Sudder Court.*

172. In all suits originally decided by the Principal Sudder Ameens, an appeal shall lie to the zillah or city Judge, and a further or special appeal, under the provisions of the Regulations applicable to such cases, to the Sudder dewanny adawlut.—*Reg. 5, 1831, Sect. 28, Cl. 2.*

In suits decided by the P. S. A., a regular appeal to lie to the judge—a special appeal to the S. D. A.

173. Decrees passed in the court of the Principal Sudder Ameens shall be executed by those courts under the general rules prescribed for the execution of decrees passed by the zillah and city Judges.—Provided however, that in such cases an appeal from the orders of the Principal Sudder Ameens shall lie, in the first instance, to the zillah and city Judges, and specially to the Sudder dewanny adawlut, that is, in suits under 5000 rupees.—*Ibid, Sect. 22.*

Decrees passed by the P. S. A., how to be executed  
To whom an appeal will lie.

174. With respect to orders passed by the Principal Sudder Ameens, in miscellaneous cases referred to them under the authority of Section 8 of the Act in question, [Act XXV. 1837, Section 8] the Court are of opinion, that the proviso contained in that section being general must be held to include cases in which the amount or value of the matter at issue may exceed 5000 rupees equally with those under that sum, and that, consequently, the appeal in such cases from the order of the Principal Sudder Ameen lies in the first instance to the zillah or city Judge, and specially to the Court of Sudder dewanny adawlut.—*Civ. Ord. Cal. and West. C. 5th June 1838, par. 4.*

A regular appeal from the P. S. A. in miscellaneous cases, will lie to the zillah judge, and a special appeal to the S. D. A.

175. After the promulgation of this Regulation the Provincial courts, and Court of Sudder dewanny adawlut, shall be guided, in their admission of special or second appeals by the rules contained in Section 2, Regulation 26, 1814; Section 7, Regulation 19, 1817; and Sections 3, 4 and 5 of Regulation 9, 1819.—*Reg. 2, 1825, Sect. 4, Cl. 2.*

By what rules the S. D. A., and provincial courts are hereafter to be guided in admitting second or special appeals.

176. In modification of the provisions contained in Section 21, Regulation 49, 1803, Section 10, Regulation 2, 1805, and clauses second and third, Section 9, Regulation 8, 1805, it is hereby enacted, that from and after the 1st of February, 1815, no special or second appeal shall be admitted by a zillah or city Judge, by a Provincial court, or by the Sudder dewanny adawlut, unless upon the face of the decree, or of documents exhibited with it (assuming all the facts of the case as stated in the decree,) the judgment shall appear to be inconsistent with some established judicial precedent, or with some Regulation in force, or with the Hindoo or Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest, or importance, not before decided by the superior courts.—*Reg. 26, 1814, Sect. 2, Cl. 1.*

Provisions in modification of the rules in force regarding the mode of admitting special appeals

177. When a party upon any of the grounds specified in the preceding clause may be dissatisfied with a judgment passed on a regular appeal, by a competent Civil court, and may in consequence be desirous of obtaining a further investigation of the suit by a

Party to present a petition to the court competent to admit such special appeal.

second or special appeal, he shall, within the limited periods prescribed for the admission of regular appeals, present a petition to the court, which under the provisions of Regulations 24 and 25, 1814, may be competent to admit a special appeal in the case.—*Reg. 26, 1814, Sect. 2, Cl. 2.*

Such petition to be written on stamped paper of what description, and what it is to contain.

178. Such petition shall be written upon the stamped paper prescribed in Section 13, Regulation 1, 1814, [*now* Regulation 10, 1829.] with reference to the value or amount of the suit calculated according to the provisions of Section 14 of that Regulation, or any provisions which may be hereafter enacted for the valuation of property sued for in the Civil courts; the petition shall state distinctly the specific ground or grounds under Clause first of this section, on which the special appeal is solicited, and shall be presented either by the party in person, or by an authorized pleader of the court. In the latter case the petition shall be signed by the pleader, who shall certify on the back of the petition, that he has duly considered the grounds stated for admitting a special appeal under Clause first of this section and believes them to be well founded and sufficient.—*Ibid, Cl. 3.*

Special appeals allowed in cases where decrees passed by one or more courts are inconsistent with each other.

179. The restrictive provisions for second, or special appeals, prescribed in the first clause of Section 2, Regulation 26, 1814, allow of such appeals being admitted, when the judgment, against which the appeal may be preferred, shall appear to be inconsistent with some established judicial precedent; but this is not understood to include the case of two opposite or inconsistent judgments passed by the same court, or by two courts having jurisdiction in the same suit, or in suits founded on a similar cause of action; though in such cases it is obvious, that one or both of the opposing judgments should be revised. It is therefore hereby provided, in addition to the grounds on which second or special appeals are declared admissible, in the first clause of Section 2, Regulation 26, 1814, that such appeals may be admitted, when the judgment against which the appeal is preferred shall, from the exhibition of another decree of the same court, or of another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, clearly appear to be in opposition thereto, or inconsistent with such other judgment.—*Reg. 19, 1817, Sect. 7, Cl. 1.*

Special appeals lie to the S. D. A. at Calcutta and Allahabad, the S. D. A. at Madras and S. D. A. at Bombay from all decisions passed in regular appeals in civil courts subordinate to them.

180. It is hereby enacted, that from and after the first day of May next, a special appeal shall lie to the Courts of Sudder dewanny adawlut at Calcutta and Allahabad respectively, to the Court of Sudder adawlut at Madras, and to the Court of Sudder dewanny adawlut at Bombay, from all decisions passed on regular appeals in the Civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice, upon which there may be reasonable doubts.—*Act III, 1843, Sect. 1.*

Applications for special appeals must be presented in the same time as for regular appeals.

181. And it is hereby enacted, that applications for special appeals shall not be admitted unless they are presented to the proper court as aforesaid within the period limited for the presentation of regular appeals.—*Ibid, Sect. 2.*

182. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.—*Act III. 1843, Sect. 3.* And be accompanied by copies of the decrees previously passed.

183. And it is hereby enacted, that every application for a special appeal duly presented to the proper court as aforesaid shall be heard by a single Judge of the court in presence of the special appellant or his vakeel or agent, and it shall be competent to the Judge at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.—*Ibid, Sect. 4.* And be heard by a single judge, who may call for any document of record, &c

184. And it is hereby enacted, that if it shall appear to the Judge that a special appeal is admissible under this Act he shall pass an order accordingly, and shall at the same time reduce the point or points to be determined to writing in English in the form of a certificate, which shall be translated into the vernacular language, in use in the court, and the special appeal shall then be brought on the file of the court to be heard and determined in due course. Provided that it shall not be necessary to call for or refer to any part of the proceedings the reading of which is not required for deciding the point or points of law stated in certificate.—*Ibid, Sect. 5.* If judge deems a special appeal admissible, he shall order accordingly, and reduce in the form of a certificate the points to be determined to writing in English, which shall be translated into the vernacular language used by the court, & the appeal shall be brought on in due course.

185. And it is hereby enacted, that if it shall appear to the Judge that a special appeal is not admissible under this Act he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.—*Ibid, Sect. 6.* Judge's order rejecting a petition for a special appeal shall be final.

186. And it is hereby enacted, that in every case of special appeal admitted as aforesaid the Court of Sudder dewanny adawlut shall determine the point or points, certified as above enacted, and no other point or part of the case whatever.—*Ibid, Sect. 7.* Upon special appeal, the S D A shall determine the points certified and no other part of the case

187. Provided that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate. Provided that such amendment shall relate only to the point or points originally stated in the certificate and it shall not be lawful for the court to receive or add any new point or points.—*Ibid, Sect. 8.* If the special ground of appeal has been incorrectly certified, the court may amend the certificate, but such amendment shall relate only to points originally certified, &c.

188. And it is hereby declared, that the existing laws and Regulations of the Presidencies of Bengal, Madras and Bombay, relating to special appeals, shall continue in force so far as they are not inconsistent with the provisions of this Act.—*Ibid, Sect. 9.* Save existing laws as to special appeals, so far as they are not inconsistent with this Act

189. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted and be pending in appeal before the said 1st day of May next, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.—*Ibid, Sect. 10.* Act not to affect pending appeals, &c.

190. I am directed by the Court to communicate to you the following rule, regarding the admission of special appeals from the province under your control to the Sudder dewanny adawlut, which, as you will perceive from the accompanying copy of the orders of the Government No. 529, of the 18th instant, and its enclosure, have been sanctioned by the Supreme Government :—*Rule.*—Under the spirit of Act III. 1843, no special appeals are to be admitted from the decisions of the authorities in the extra Regulation provinces without the sanction of Special appeals may be received by the S D. A. from the extra regulation provinces.



the Court. Nevertheless in order to promote facility of access to the court, applications for special appeals may be presented to and received by the local authorities within the prescribed period of three months, to be transmitted, with the proceedings of the Courts of first and second instance, to the Sudder dewanny adawlut; and it shall not be obligatory on the appellants to appoint vakeels in such cases till after notice given to the appellants of their appeals having been admitted.—*Cir. Ord. 20th March 1846.*

No applications for the admission of special appeals will be received by the zillah courts after May 1st, 1843.

The judges will dispose as speedily as possible of all special appeals then pending.

In cases of special appeal, copies of the several decrees previously passed must be submitted within the period allowed for the presentation of regular appeals; otherwise the appeal must be rejected.

The widest publicity is to be given to the above construction of the law, the provisions of which are imperative.

A mere application to lodge a special appeal within three months, does not save its rejection.

The grounds of appeal, when inadvertently omitted in the petition, may be given in a supplementary petition.

191. Under Act III. 1843, which comes into operation on the first May next, no applications for the admission of special appeals will be receivable by the Zillah courts. As this will afford the Judges leisure to decide more appeals from the decisions of the Sudder Ameeris and Moonsiffs than they were able to do, when they had to receive petitions for special appeals and to try the appeals specially admitted, the Court are desirous that the Judges should bestow their primary attention on the disposal of the special appeals and the petitions for the admission of such appeals which may be pending on their files at the date above mentioned, to admit of a judgment being formed of the extent to which they are able to try regular appeals from the orders of the lower grades of Native Judges.—*Cir. Ord. 28th April 1843.*

\* 192 As misconception appears to prevail in regard to the period allowed by law for the institution of special appeals, and the obligation resting on such appellants, of submitting, together with their petitions, copies of the several decrees passed on the case, by both the inferior courts, the Court deem it right to declare, that agreeably to the unqualified terms of Section 2, Act III. of 1843, no application for special appeal can be legally admitted, unless it be presented "within the period limited for the presentation of regular appeals," and that the required copies of the previous decisions must be exhibited within the same period. A strict interpretation of the law, which enacts that "every application for special appeal shall be accompanied by copies of the several decrees previously passed on the case," might perhaps justify the conclusion that unless the petition praying for special appeal be so "accompanied," that is unless the petition and the copies of decrees previously passed be simultaneously submitted, it cannot be recognized as a *legal* application for special appeal, but without intending to rule this point, the Court intimate that the documents in question must be invariably exhibited within the period allowed for the presentation of regular appeals and that failure to observe this injunction will necessarily involve a rejection of the petition praying for special appeal, even though the latter may have been filed within the limitation above mentioned.—*Cir. Ord. 23d May 1845, par. 1*

193. The civil Judges are requested to take every proper means for giving the widest publicity to this construction of a law, the provisions of which are imperative, and confer upon the Sudder dewanny adawlut no authority to admit special appeals not legally instituted within the period allowed by law for the presentation of regular appeals.—*Ibid, par. 2.*

194. A mere application for permission to lodge a special appeal in the Sudder dewanny adawlut, presented within three months from the date of the decree of the Zillah court, is not sufficient to bring the applicant within the time.—*Rep. Sum. Cases, 13th July 1842, p. 34.*

195. A person having inadvertently omitted in his petition of special appeal to state the grounds on which he appealed, may be allowed to supply the omission by a supplementary petition on the stamp prescribed by Section 17, Regulation 1, 1814.—*Con. 248, 8th May 1816.*

196. Failure to state the grounds of appeal, within the same period, without good cause for the neglect, subjects the application to be struck off the file.—*Rep. Sum. Cases, 13th July 1842, p. 34.*

If the grounds are not stated within the appointed period, the application is liable to rejection

197. Where an appeal from a judgment affecting the interests of Government was admitted after a lapse of 5 months and 13 days from its date, appellant justified delay by the necessity of reference to and sanction of the superior functionaries of Government.—*S. D. A. Sel. Rep. 30th Sept. 1833, vol. 5, p. 331.*

Case in which an appeal affecting the interests of govt. was admitted, after the lapse of five months.

198. The Provincial court having refused to admit an appeal *in forma pauperis*, on the merits of the case, and without reference to the question of pauperism, held that such order is final, and not open to special appeal.—*S. D. A. Sel. Rep. 16th Jan. 1826, vol. 4, p. 104.*

When a prov court refused to admit a pauper appeal on the merits of the case, the order was deemed final

199. Special appeals (after admission) to be dealt with in regard to the preparation of the cases for trial, the same as regular appeals.—*Rules S. D. A. 21st Jan. 1842, Sect. 19.*

How special appeals are to be dealt with.

200. If on a consideration of the circumstances of the case, the court shall see reason for admitting a special appeal on any of the grounds stated in the first clause of this section, [the appellant shall be required to furnish the prescribed security, and to deposit the amount of the fees payable to his pleader under the rules in force, within a reasonable period to be fixed by the court; when the required security and deposit shall have been duly furnished,] the court will admit the special appeal, and proceed to investigate the suit under the same rules as are prescribed for the trial and determination of regular appeals.—*Reg. 30, 1814, Sect. 2, Cl. 4* [The rules included within brackets have since been repealed.]

Mode of proceeding when a special appeal may be admitted

## SECTION XVII

### *Grounds on which Special Appeals have been admitted or refused.*

201. Adverting to the practice, adopted in frequent instances of applications for the admission of special appeals, of urging pleas on the grounds of informality and departure from the law of procedure in the Court of first instance, which have not been urged in the Court of first appeal, the Court *resolve*—That as a general principle, the Court will not consider, as a sufficient ground for the admission of a special appeal, any plea urged upon the ground of mere informality or departure from the law of procedure occurring in the Court of first instance, unless the same shall have been urged in the Court of first appeal, and unless the certificate endorsed on the petition shall specify that such plea was urged in and rejected by such court.—*Res. S. D. A. 16th July 1847*

No special appeal will be admitted on the ground of mere informality or departure from the law of procedure in the court of first instance, unless it was urged in the court of first appeal

202. Two Judges of the Sudder dewanny adawlut admitted a special appeal because the lower courts had decided the case, in which a question of *Hindoo* law was involved without reference to the law officer. The Judges, who heard the case in appeal, differing from these facts in the lower courts, adjudged the case [without reference to their law officer,] on usage and *Hindoo* law applicable to facts found by them.—*S. D. A. Sel. Rep. 31st Dec. 1833, vol. 5, p. 335.*

Special appeal admitted because the lower court had decided a case involving a question of Hindoo law, without any reference to the pundit.

203. The circumstance of a rent-free suit reported upon by a Collector having been referred for decision to a Sudder Ameen, was held to be a good ground for admitting a special

— And because a rent-free suit had been referred to a S. Ameen for decision.

- - And because a case had been decided without reference to an award of arbitration.

Case in which the S. D. A. allowed six suits to be consolidated, and admitted one special appeal from the six decrees.

appeal ; as also was the fact of a case having been decided without reference to an award of arbitration.—*Con. 499, 27th March 1829.*

204. Six different actions having been instituted, for as many villages, to set aside a single deed of conveyance of the whole, and having been decided together by the Courts of original jurisdiction and first appeal, the Sudder dewanny adawlut, under the circumstances allowed the cases to be consolidated, and admitted one special appeal from the six decrees.—*Rep. Sum Cases, 3d June 1835, p. 8.*

Special appeal admitted from a decision relative to money borrowed which had been applied, generally, to the benefit of an undivided family

205. The appellants were adjudged by the Provincial court to pay a debt borrowed by their brother, on the ground of the family being undivided and the money borrowed being applied to the benefit of the family generally, but the decree at the same time, allowed them to sue for the recovery of the sum so adjudged from the estate of their brother. A special appeal was admitted against this part of the decree, as inconsistent, and so much of the decree as gave the option was annulled by the Sudder dewanny adawlut.—*S. D. A. Sel. Rep. 14th Aug 1817, vol. 2, p. 247.*

A special appeal admitted, to settle a doubt whether an ameen's being sworn after his report, was sufficient

206. A special appeal admitted from a doubt whether, in a case in which an ameen not having been sworn, previous to deputation under Section 17, Regulation 4, 1793, the defect was cured by his being subsequently sworn to his report.—*S. D. A. Sel. Rep. 10th Jan. 1833, vol. 5, p. 261.*

And on the ground of defect of investigation in the lower court

207. A special appeal admitted on the ground of defect of investigation which appeared from the decision of the lower court.—*S. D. A. Sel. Rep. 5th Feb. 1833, vol. 5, p. 266.*

And against a fine of 10014 imposed by a judge, for the temerity of the defence

208. A special appeal admitted because the order of the zillah Judge, imposing a fine of 100 rupees on appellant for the temerity of his defence, was unjust and contrary to judicial practice.—*S. D. A. Sel. Rep. 15th April 1833, vol. 5, p. 290.*

And where a course of procedure prescribed by the regulations, had not been observed.

209. Where a course of procedure prescribed by Regulation had not been observed, [e. g. that directed in Clause 2, Section 3, Regulation 2, 1805, where fraud is alleged as a bar of limitation] the Sudder dewanny adawlut admitted a special appeal.—*S. D. A. Sel. Rep. 9th Sept. 1833, vol. 5, p. 323.*

And because the lower court had not enquired into the state of an account or the service of the notice under reg. 17, 1806, see 8.

210. In an action to recover on a conditional sale, the plaintiff recovered in the lower courts on ground that the sale had become absolute by default of vendor to repay all, within the legal time, but vendee had received rent from the sold property, and had continued to receive partial payments after default, and vendor had deposited in court a sum as balance due to the vendee. A special appeal was admitted because the lower courts had not enquired into the state of account, nor as to disputed service of notice under Section 8, Regulation 17, 1806, on vendor.—*S. D. A. Sel. Rep. 28th Feb. 1834, vol. 5, p. 346.*

- - And because the S. D. A. doubted the accurate finding of a fact operating a legal forfeiture.

211. The Sudder dewanny adawlut admitted a special appeal, perceiving reason to doubt the accurate finding of a fact operating a legal forfeiture, but decided that the case should not be held as a precedent.—*S. D. A. Sel. Rep. 20th Dec. 1830, vol. 5, p. 79.*

A special appeal cannot be admitted to reverse an error in the determination of facts; they must be assumed as stated in the decree.

212. Upon the first question proposed by your fourth Judge, viz. whether a special appeal may be admitted to reverse an error in the determination of facts, when the judgment may appear to be manifestly without, or contrary to, evidence, the Court are of opinion, that a special appeal cannot be admitted on such grounds under Section 2, Regulation 26, 1814; which



requires that all the facts of the case must be assumed as stated in the decree.—*Con. 246, 1st May 1816, par. 2.*

213. Upon the second point, viz. when exorbitant damages may appear to have been given, the Court can offer no opinion without more particular information of the case, and the damages awarded; such as might enable them to judge, whether the case is within any of the special grounds stated in the first clause of Section 2, Regulation 26, 1811. The Court, therefore, can only suggest, that you should exercise your own judgment on the case, in determining whether it falls within any of the prescribed grounds for the admission of special appeals or otherwise.—*Ibid. par. 3.*

But whether it can be admitted when exorbitant damages have been given, must depend on the judgment of the judge.

214. A special appeal having been admitted in a case originally decided on the evidence of a deed bearing an improper stamp, or requiring a stamp but written on plain paper, the decisions of both the lower courts should be set aside, and the Court of first instance directed to restore the case to its original number on the file, and after exercising its discretion in regard to granting or not granting the party who presented the deed an opportunity of remedying the defect in it in the mode laid down in rules 1 and 2, (as either may apply), to dispose of the case accordingly.—*Con. Ord 7th Jan 1812, par. 7.*

Course to be pursued where a special appeal has been admitted in a case originally decided on the evidence of a deed improperly stamped.

## SECTION XVIII.

### *Stamp Fees, Pleadings, &c*

215. In applications for special appeal no exhibit fee is leviable on documents filed with the petition until the appeal is admitted.—*Con. 961, West. C. 26th June, Cal. C. 7th Aug 1835.*

No fee is leviable on documents filed with the petition of special appeal, till it is admitted.

216. It has been the practice of this court to allow the appellant to file, with his petition of appeal, the mooktarnamah under which the vakalutnamah may be executed, and the security bonds for costs for staying or enforcing execution, as well as the vakalutnamah and copy of the decree appealed against, and that all other documents are given in with a separate petition on the usual stamp. In applications for special appeals no exhibit fee is required with the documents filed (according to a general roolukarte dated the 13th January, 1830, copy of which is annexed,) until the special appeal be admitted, when the fee is levied on such documents as are put on record in the proceedings.—*Ibid*

What documents the appellant is allowed to file with his petition of appeal, & what must be sent in with a separate petition on the usual stamp.

217. On the special appeal being admitted, the exhibit fees due under the general Regulations are to be paid within six weeks on all papers (whether copies or original) not on the record of the case appealed.—*Rules S. D. A. 7th May 1841.*

The exhibit fee must be paid within six weeks after the special appeal has been admitted.

218. In the event of failure of payment, the case will be dealt with as any other case of default.—*Ibid.*

Penalty for failure.

219. Parties engaging pleaders to present application for the admission of special appeal, must distinctly state in their vakalutnamahs, whether the pleader is merely to make the preliminary application, or to conduct the case to its final issue.—*Rules S. D. A. 25th Nov. 1842.*

What the parties must state in their vakalutnamahs when engaging pleaders to present applications for special appeals.

Stamp duty refunded in cases where appeals are referred for further investigation.

Limitation as to the fee to be paid to the pleaders in such cases

Courts authorized to refund a portion of the stamp duty in certain cases when the petition for a special appeal may be rejected

Orders of the S. D. A. where the original notice of appeal had been mislaid

220. In the special appeals provided for by the foregoing section, as well as in all other appeals, regular or special, under the Regulations in force, if the suit in appeal be referred back for further investigation and decision, without a judgment upon the merits of the case the stamp duty paid by the appellant on his petition of appeal shall be returned to him; and if the appellant, or respondent, have appointed a pleader, his fee shall be limited to such sum as may be deemed an adequate compensation for his labour, not exceeding one-fourth of the established fee in a regular suit.—*Reg. 19, 1817, Sect. 8.*

221. If the court shall not see sufficient reason for admitting the special appeal, and shall in consequence reject the petition, the appellant shall not be entitled to receive back the amount or value of the stamp on which the petition may have been written under clause third; the courts are however vested with a discretionary authority in any particular instance of hardship to refund any portion not exceeding three-fourths of the amount of such stamp duty to the party who may have paid the same, or to his legal representative.—*Reg. 26, 1811, Sect. 2, Cl. 5.*

222. Where the original notice of appeal (special) had been mislaid, the Sudder dewanny adawlut directed renewal, and the respondent was allowed to appear and defend after proceedings had in the appeal *ex-parte*—*S. D. A. Sel. Rep. 5th Feb. 1833, vol. 5, p. 266.*

## SECTION XIX.

### *Review of Judgment by the Sudder Court*

Provision for empowering the S. D. A. to grant a review.

223. The Court of Sudder dewanny adawlut, in cases referred to them under the preceding clause, as well as in all cases in which a petition may be presented to them for a revision of their own judgments, which may not have been appealed to the King in Council. (or though appealed, the proceedings in which may not have been transmitted to the King in Council,) are authorized to grant the review desired, if upon a consideration of the reasons stated, the circumstances of the case shall appear in justice to require it. The Sudder dewanny adawlut shall record on their proceedings the grounds upon which a review may be granted by them in each instance, and shall issue any instructions regarding the admission or rejection of new evidence in the case, which they may deem just and proper.—*Reg. 26, 1814, Sect. 4, Cl. 3.*

The orders rejecting applications for a review not to bar the right of a party to prefer a regular appeal

224. The order of a Zillah or City court, or of a Provincial court, or of the Sudder dewanny adawlut, rejecting the petition for a review in the first instance, or of the latter court refusing to sanction a review when applied for by a lower court, shall not be construed to preclude the party from instituting a regular appeal, (if the case be appealable) in a competent court, subject to the conditions and rules prescribed by the Regulations in force for the admission of such appeals.—*Ibid, Cl. 4.*

*The rules regarding Stamps on petitions for a review of judgment will be found at Chapter VII, Section 21, page 725.*

225. In addition to the rules contained in Section 4 of Regulation 26, 1814, relative to petitions for a review of judgment in regular original suits and appeals, decided by the Zillah, City, and Provincial courts, or by the Court of Sudder dewanny adawlut, it is hereby provided, that whenever the Judge or Judges, who may have passed the decree or if the decree have been passed by two or more Judges, when any of such Judges shall continue attached to the court, at the time when the petition for a review is received, and shall not be precluded, by absence or other cause, for a period of six months after the receipt of the petition from considering and recording his order or opinion upon the same, it shall not be competent to any other Judge or Judges of the same court, to enter upon a consideration of the merits of the petition, and record an order or opinion thereupon, it being the obvious intention of the rules referred to, that application for a review of judgment made in pursuance thereof, should, as far as practicable, be received and disposed of by the Judge or Judges who may have passed the decision, subject to the regular course of appeal, if the case be appealable to a superior court. Provided however, that this restriction shall not be considered applicable to cases not open to a further appeal, in which a single Judge, whether of a Provincial court or of the Court of Sudder dewanny adawlut, may appear, on the face of the decree to have exceeded the powers vested in him by the Regulations. In such cases the decree being imperfect, and irregular, it shall be competent to a majority of the Judges of the Provincial court, or of the Court of Sudder dewanny adawlut, concurring in opinion as to such irregularity, to proceed upon the petition for a review, in the manner prescribed by Section 4, Regulation 26, 1814, and by the present Regulation.—*Reg. 2, 1825, Sect. 3.*

Additional rules relative to the consideration of petitions from review of judgment in regular original suits & appeals.

Such petitions in all practicable cases to be received and disposed of by the judge who passed the decision, subject to the regular course of appeal.

Where restriction however declared inapplicable to cases where the judge in passing a decision may have exceeded the powers vested in him.

Rule of proceeding to be observed by the judges in correcting such irregularities.

*Regarding the language in which the order for the review of judgment is to be written vide Chapter III, Section 1, No 10, page 218.*

226. Held that an application for a review of judgment is not cognizable by the Court after the lapse of twelve years from the date of the final decision passed in the case.—*Rep. Sum. Cases, 25th May 1840, p. 31.*

An application for a review of judgment not cognizable after 12 years.

227. On the 30th December, 1820, a Judge of the Sudder dewanny adawlut struck an appeal off the file, on the compromise of the guardian of an infant appellant with respondent. On the application of appellant, at the end of eleven years (three after the age of 16 attained,) review was admitted by a single Judge and appeal revived on the ground that there was no apparent benefit by the withdrawal of the appeal. Review admitted *ex-parte* on ground of obvious error without summoning opposite party to shew cause.—*S. D. 1st Sel Rep 19th July 1833, vol. 5, p. 307.*

Review admitted after 11 years.

228. An application to review the order rejecting the admission of a special appeal must be preferred within three months from the date of the order of rejection.—*Rep. Sum. Cases, 28th Sept. 1842, p. 39.*

Within what time an application to review an order rejecting a special appeal must be preferred.

229. A question having arisen in a case decided by two Judges, both of whom continue attached to the court, whether on an application for a review of judgment such application

To whom an application for a review in a case decided by

two judges, both of whom are still attached to the court, is to be presented.

Course to be pursued in the event of a difference of opinion between them.

should be submitted for the opinion of both of the judges, or whether the opinion of one for the admission or rejection of the review is final, the Court are of opinion, on due consideration and with reference to the rule laid down in the case of Musst. Ujgnasee regarding the admission of a review of judgment in the Provincial court of Patna, but in such cases the petition of review should be laid before the Judges who passed the decrees; and that in the event of a difference of opinion between them, as to the admission or rejection of the review, the matter should be referred to one or more Judges of the court, until the question be determined by a majority of voices.—*Con. 756, Cal. C. 8th Feb., West. C. 15th March 1833.*

When in a case decided by a single judge, he rejects an application for a review, his rejection is final, unless he changes his opinion. No other judge can subsequently authorize a review.

230. It was resolved in concurrence with the Western Court that when, in a case decided by a single Judge, the deciding Judge shall have rejected an application for a review of the judgment, his rejection is to all intents and purposes final; unless he himself shall see grounds, on a subsequent application, to admit a review, and that it is not competent to the court (the said Judge being absent and incapable of hearing a second petition within six months) to authorize a review of the order rejecting the review. — *Con. 982, Cal. and West. C. 16th Oct 1835.*

Two judges pass a decision, both admit a review of it, one leaves the court before the rehearing; the decision of the other, if confirmatory of the former judgment, is final.

231. Two Judges of the Sudder confirm the decree of a Provincial court. The same two Judges admit a review,—one of them leaves the court, the other confirms the decision previously passed by the two. Under those circumstances the Court resolved that the second decision of the remaining Judge is final, and that a second concurring voice is not necessary to render it so.—*Con. 683, 16th March 1832.*

An application for review rejected by the deciding judge cannot be admitted by another judge.

232. An application for a review of judgment rejected by the deciding Judge, cannot be admitted by any other Judge.—*S. D. A. Sel. Rep. 26th March 1838, vol. 6, p. 221.*

Case of review of judgment where two judges differed from two other judges

233. In a case of review of judgment, two Judges being of opinion that the decree reviewed should be reversed, and two that it should be affirmed, one of the latter having joined in passing the decree reviewed, and the Judge who concurred with him in that decision having since died; held, that the opinion of the deceased Judge should be taken into the account so as to create a majority without the necessity of calling in a fifth Judge.—*S. D. A. Sel. Rep. 5th July 1823, vol. 3, p. 234.*

Case of a review admitted by a single judge

234. The Zillah court, on plaintiff's suit, adjudged a conditional sale made by defendant to be absolute. The appeal was heard by two Judges of the Provincial court in succession: the last adopted the judgment of reversal proposed by the former on the ground of redemption by the vendor, but the first Judge by order on petition of the respondent had retracted the verdict, whence the case was sent back to him, and he now reverted to his first verdict and passed judgment in conformity. Again moved by the vendee, by an order on his petition he directed an application to the Sudder dewanny adawlut for review, because vendor had not redeemed and no provision had been made for the balance due, and he staid execution. This order had not been sent to the other Judge for concurrence, when the Provincial court was abolished under Regulation 2 of 1833. On application to the Sudder dewanny adawlut by original defendant for a special appeal, review of judgment was admitted by a single Judge [who had consulted his colleagues under Section 5 of that Regulation].—*S. D. A. Sel. Rep. 12th March 1834, vol. 5, p. 352.*

Case in which a question of review came up before two

235. Messrs. Rattray and Turnbull admitted a review of the judgment passed by themselves. Mr. Rattray on hearing the review proposed to confirm the judgment, and, as Mr.

Turnbull had left the court, sent on the case for another voice. Messrs. Shakespear and Walpole were of opinion that Mr. Rattray was competent singly to confirm, and that the reference to another Judge was unnecessary.—*S. D. A. Sel. Rep. 20th Feb. 1830, vol. 5, p. 16, Note.*

judges, one of whom having left the court, the other was deemed competent to decide the question singly.

236. Though the rejection of a petition of review by the deciding Judge is final, yet the deciding Judge having waived his objection to the appeal being re-heard, the review was admitted.—*S. D. A. Sel. Rep. 20th July 1836, vol. 6, p. 88.*

When the deciding judge, having rejected a petition for review, waived his objection, the review was admitted.

237. A plea of insanity set up by the plaintiff, not having been investigated, a review was admitted and the case sent back for a new trial.—*S. D. A. Sel. Rep. 24th July 1822, vol. 3, p. 162.*

Review admitted because a plea of insanity had not been investigated

238. A claim to *but mohabramnee* having been dismissed, a review of judgment was admitted on a suspicion that the *pundit*, on whose *ryavastha* the special appeal was decided, had taken a bribe to induce him to give a favorable answer. But it appearing that his exposition of the law was correct, the judgment was confirmed.—*S. D. A. Sel. Rep. 30th June 1825, vol. 4, p. 70.*

— And because of a suspicion that the pundit on whose *ryavastha* the special appeal was decided, had been bribed.

239. Review admitted *ex-parte* on the ground of obvious error, without summoning the opposite party to shew cause.—*S. D. A. Sel. Rep. 19th July 1833, vol. 5, p. 307.*

— And on the ground of obvious error.

240. The Sudder dewanny adawlut had confirmed the decision of the Provincial court, which dismissed a claim as barred by prescription; but afterwards, on review, held that valid exception existed, and directed that the suit revived should be tried on its merits. Held, that the lower court and the Sudder dewanny adawlut in appeal, cannot again go into the question of prescription; nor try any alleged fraud and imposition, by which, on review, the order for the revival of the case had been obtained.—*S. D. A. Sel. Rep. 31st Jan. 1832, vol. 5, p. 165.*

Particular case of a review decided by the S D A.

241. Application for a review of judgment, on grounds already decided upon by former Judges of the Sudder dewanny adawlut, rejected.—*Rep. Sum. Cases. 10th Feb. 1841, p. 3.*

Application for review on grounds already decided by the former judges of the S D A, rejected

242. The opinions recorded by Judges of the Sudder dewanny adawlut on a first decision not set aside merely by admission of a re-hearing, or review of judgment.—*S. D. A. Sel. Rep. 3d April 1842, vol. 7, p. 81.*

The opinions of the judges on a first decision are not set aside by admitting a

243. A review of judgment having been admitted in consequence of a slight difference in the opinion of the deciding Judges, held that their opinions are not thereby cancelled, but are to be taken into account in the final disposal of the case.—*S. D. A. Sel. Rep. 18th June 1840, vol. 6, p. 290.*

A review being admitted in consequence of a slight difference, the opinions of the judges are to be taken into account in the final disposal of the case

244. To enable the Sudder dewanny adawlut to receive an application for a review of judgment on paper of the value prescribed for miscellaneous petitions, it should be filed complete within three months, accompanied by all the necessary papers.—*Rep. Sum. Cases, 23d Aug. 1842, p. 37.*

Application for review must be filed complete in three months, to secure its being received on the stamp for miscellaneous petitions.



Case in which the S. D. A. strictly construed the terms of a final decree of a lower court.

245. The Sudder dewanny adawlut, dissenting from the principle on which a final decree of the lower court was passed, construes strictly its terms.—*S. D. A. Sel. Rep.* 13th Jan. 1834, vol. 5, p. 338.

Mode of correcting an evident error in the decree of a former judge without a review.

246. Mode of proceeding to amend an evident error in the decree of a former Judge of the Sudder dewanny adawlut, without the admission of a formal review.—*Rep. Sum. Cases*, 15th July 1841, p. 14.

## SECTION XX.

### *Decrees of the Sudder Court.*

Decrees to be signed by the judges, and attested by the register, and copies to be delivered to the parties.

247. The decrees are to be signed by the Judges present in the court when the decrees may be passed, and attested by the Register, and copies so signed and attested are to be delivered to the parties.—*Reg.* 6, 1793,  *Sect.* 28.—*Benares Reg.* 10, 1795,  *Sect.* 2.—*Ced. and Cong. Prov. Reg.* 5, 1803,  *Sect.* 28.

If a single judge of S. D. A., trying an appeal, regular or special, is of opinion that the decision appealed against ought to be altered or reversed, he shall call in two other judges to sit with him, and the three shall decide the case, & if they agree, sign, it on the opinion of him who differs shall be recited in the decree.

248. It is hereby enacted, in modification of Section 16, Regulation 25, 1814, that when a single Judge of the Sudder dewanny adawlut, trying a case in appeal, regular or special, from any subordinate court, shall be of opinion that the decision appealed from ought to be reversed or altered, he shall always call in two other Judges of the court to sit with him, and that the appeal shall be then heard by the three Judges sitting together, and be decided by them without any additional voices. In such cases the decree or final order shall be signed by the three Judges, if they agree together; but, if one of them dissent from the view taken by the majority, by the two Judges who agree together, and the signature of the third Judge shall not be considered requisite, but his opinion shall be recited in the decree or final order.—*Act II.* 1843,  *Sect.* 1.

*Regarding the language in which the decree is to be written, vide Chapter III, Section 1, No. 10, page 218.*

The provisions of the three preceding causes applicable to copies of decrees or orders from which a party may desire to prefer a special or a summary appeal.

249. The principles of the rules contained in clauses eighth, ninth, and tenth of this section, are to be considered applicable to all copies of decrees, from which a party may be desirous of preferring a special or a summary appeal; and to all copies of orders passed by the Judges and Registers of the Zillah and City courts, by the Provincial courts, and by the Sudder dewanny adawlut, which those courts may be required to furnish to parties under the provisions of any Regulation.—*Reg.* 26, 1811,  *Sect.* 8,  *Cl.* 11.

Decrees of the S. D. A. are to be final—exception.

250. The decrees of the Sudder dewanny adawlut, are to be final in all suits whatever, [except in cases of appeals to the Privy Council].—*Reg.* 6, 1793,  *Sect.* 29.

The S. D. A. will not admit any appeal to the privy council except those provided for by reg. 16, 1797.

251. The Court, having taken into consideration the papers laid before them, concur in opinion with Mr. Smyth, that the orders of the Court in all miscellaneous cases are final. Accordingly it is resolved that the Court will in future decline to admit any appeals to the King in Council, excepting such as are expressly provided for by Regulation 16 of 1797.—*Con.* 1102,  *Cal. C.* 18th Aug.,  *West. C.* 15th Sept. 1837.

252. To prevent an abuse of the above rule, and the encouragement of litigious appeals, the Provincial courts of appeal in all cases wherein they may confirm the decree of a Zillah or City court, and the Sudder dewanny adawlut, in all cases wherein it may confirm the decree of a Provincial court, are to adjudge interest at the rate of one per cent. per mensem on all sums receivable by the respondent under the decree passed in his favour, from the date of such decree, and are authorized to punish appeals which may appear to them litigious, by a fine to Government, proportionate to the condition of the party and the circumstances of the case.—*Reg. 13, 1796, Sect. 3.*

Interest to be allowed on sums adjudged by decree appealed from, if confirmed, and litigious appeals to be punished by fine.

253. Where the fine may be imposed for a litigious appeal in conformity to Section 3, Regulation 13, 1796, the amount, if not immediately forthcoming, should be realized under the same rules as are applicable to the execution of decrees of court.—*Con. 1096, Cal. and West. C. 7th July 1837.*

How the above fine for a litigious appeal should be realized.

## SECTION XXI.

### *Execution of Decrees of the Sudder Court.*

254. The Sudder dewanny adawlut is empowered in every case in which a sum of money is decreed to be paid by a zemindar, independant talookdar, or other actual proprietor of land, to issue an order to the proper court, to execute the decree in the same manner as the courts are authorized to execute decrees by which a sum of money may be decreed to be paid by any of the descriptions of persons abovementioned.—*Reg. 6, 1793, Sect. 21.—Benares Reg. 10, 1795, Sect. 2.—Ced. and Cong. Prov. Reg. 5, 1803, Sect. 21.*

S. D. A. empowered to order the provincial courts to enforce decrees for sums of money against proprietors of land by the same process as those courts may enforce such decrees passed by themselves.

255. The Deputy Register will receive all applications for the execution of decrees, and after comparing them in the usual manner, will forward them for execution to the Zillah court.—*Rules S. D. A. 21st Jan. 1812, Sect. 20.*

The deputy register will receive applications for execution of decrees and forward them to the zillah judge.

256. Whenever it may be necessary under any of the circumstances stated in Clause 8, Section 15, Regulation 26, 1814, to issue a notice calling on the party against whom execution issued, to show cause why it should not be executed, it will be sufficient to direct the zillah or city Judges to issue the required notice. If no objections be made by the party against whom execution issued, the zillah or city Judge will proceed to execute the decree in the usual manner, without further reference to this court. Should any objection be urged, the Judge will make the necessary investigation, reporting the result for the orders of the court and staying further proceedings in execution pending the reference.—*Rules S. D. A. 4th July 1831.*

Notice to show cause against execution will be issued by the zillah judge.

If there be no objections, he will execute it; if there be, he will investigate them.

257. The Deputy Register shall record in a proceeding any errors that may appear in an application for execution of a decree, for the information of the decree-holder or his vakeel, and the decree shall not be forwarded to the Zillah court for execution, until such errors have been corrected. Should any objection arise or be raised to the execution of a decree, the Deputy Register will lay the case before the Judge selected as referee.—*Rules S. D. A. 21st Jan. 1842, Sect. 21.*

How any error in the application for execution is to be dealt with; any objections raised are to be disposed of by the deputy register.

Course of proceeding where the zillah judge returns the decree before it is executed

258. When a decree has been returned by a Zillah court before completion of execution and application for revival of execution has been made to this court, the Deputy Register shall submit such application to the Judge selected as referee.—*Rules S. D. A. 21st Jan. 1842, Sect. 22, but see Rule 27, No. 171.*

— And when applications for execution are preferred by any other than the party who has obtained the decree.

259. Applications for the execution of decrees preferred by any other than the person or persons named in the decree as the party in whose favor the decree was given, are to be laid before the Judge selected as referee.—*Ibid, Sect. 23.*

When the zillah judge has dismissed a case of execution of decree, on default, he cannot of himself readmit the case

260. A case involving the execution of a decree passed by the Court of Sudder dewanny adawlut, having been referred in the usual course for execution to the Judge of the zillah or city in which the cause of action arose, and having, after due notice served on the decree-holder either in person or by vakeel, been dismissed on default in consequence of the neglect of the party to proceed in the matter within the period allowed, the zillah or city Judge is not competent of his own authority to readmit the case, or to restore it to the file of his court —*Civ. Ord. Cal. C. 7th, West. C. 21st Dec. 1838.*

The judge will return the precept, certifying the execution, as far as lies in his power

261. But whenever after the service of notice as above required, and which should be invariably and carefully attended to, a zillah or city Judge may find it necessary to dismiss a case of this nature on default, his proper course of proceeding is immediately to return to the court the precept issued to him in the matter, certifying the execution of it, as far as lay in his power, as well as what he may have done in pursuance of the court's orders; and if the decree-holder should at any future period, renew his application for the enforcement of the award, he should be referred to the court by whom the decree was passed, and who alone are competent under such circumstances to comply with the prayer of the petition, and to direct the readmission of the suit on the file of the lower court.—*Ibid.*

The court which passed the decree can alone direct its readmission

How applications for the revival of decrees are to be disposed of

262. The Court resolve that applications for the revival of decrees of the Sudder dewanny adawlut and Provincial courts, struck off on default, be referred to the Deputy Register under Act XVII. 1811, who will admit the applications, provided they be made within twelve years from the date on which the cause of execution was struck off, and no objection be raised by the opposite party, or refer them to the Judge who has been appointed as referee, should any objections exist.—*Rules S. D. A. 31st March 1845.*

All intermediate returns from the zillah judges to be discontinued.

263. The Court having had under consideration the unnecessary delay and additional trouble that is occasioned to the zillah Judges and their amlah, by the preparation of intermediate or messee returns to precepts issued by this court in the execution of their decrees, are pleased to direct that such returns be entirely discontinued from the 1st of May next.—*Civ. Ord. 2d April 1841, par. 1.*

A quarterly return to be made of the unexecuted decrees of the court by the zillah judge, according to a particular form.

264. In order to enable the Court to exercise a proper superintendence over this important department, and also to ascertain the exact progress made in the execution of their decrees, they request that you will submit a return every quarter of the unexecuted decrees of the Court of Sudder dewanny adawlut to this office, agreeably to the annexed form, both in English and in the vernacular, commencing from the first April instant. Full details must be given in the column appropriated to remarks, that the Court may at once see to what authority any unnecessary delay in the non-execution of their decrees is attributable.—*Ibid par. 2.*

*Quarterly Return of the unexecuted decrees of the Court of Sudder dewanny adawlut pending in the zillah court of \_\_\_\_\_ on the 1st April, 1841.*

Quarterly return.

Number of zillah register	Number of the sudder suit and date of decision	Number and date of the first precept.	Names of the parties	Substance of the decrees.	Cause of non-execution.
1	No. 114 of 1839 Decided 10th June 1839	No. 61 2d of Feb'y. 1840	Ram Mohun Ghose, appellant, <i>versus</i> Khivollah Shah, respondent & decree holder	To put respondent in possession of Bishempore zemindari with mesne profits for two years.	An ameen is now in the process of ascertaining the amount of mesne profits. possession has been already given
2	No. 230 of 1839 Decided 10th Sept. 1839	No. 87. 5th May 1840	Teensary Shah, appellant, <i>versus</i> Asmim Beebee, respondent & decree holder.	To realize the sum of 10,000 rupees with costs	Writ of execution has been taken out &c, but the appellant has not yet been apprehended

265. The Court having observed a want of uniformity in the quarterly statements of unexecuted decrees, submitted under Circular order, No. 1100, of the 2d April, 1841, direct that you will adhere to the instructions therein contained, transmitting separate statements from each court before which the cases may be pending, and also designating the court whose decree is in course of execution.

Privy Council,

Sudder dewanny adawlut,

Late Provincial court,

as it may be. Many of the statements recently received, indicate that sufficient attention is not given to the preparation of them, nor to their examination by the Judges themselves previous to their being submitted, whereas the Court are of opinion that no duty of greater importance devolves on the Judges than the carrying out to completion the decisions that are passed.—*Cir. Ord. 6th May 1842.*

266. Should any of the decrees of the Provincial courts of the Privy Council be pending unexecuted in your district, you are requested to submit separate quarterly returns of these cases also.—*Cir. Ord. 2d April 1841, par. 3.*

267. The Court request that in the quarterly returns of unexecuted decrees of the superior courts, prescribed by Circular order, No. 147, of the 2d April, 1841, the amount to be realized in cases of money decrees be always specified in column 5; and a memorandum given in column 6 to the following effect.—*Cir. Ord. 8th Dec. 1843.*

Separate statements designating the court whose decree is in course of execution, will be sent up by the zillah judge

A separate quarterly statement to be made of any decrees of the prov. courts remaining unexecuted

Farther instructions for preparing the quarterly returns.

The P. S. A. will also submit the same kind of quarterly returns which are required of the zillah Judge.

268. The Circular order, No. 1400, dated 2d April last, having omitted to make specific reference to cases of unexecuted decrees of the Sudder dewanny adawlut before the Principal Sudder Ameens, in which precepts are wont to issue direct from the court to those officers, the Court, in continuation of the above Circular, are pleased to notify that the same rule enjoining the submission of quarterly, and dispensing with intermediate returns, is applicable to the Principal Sudder Ameens, who are to transmit the requisite information to the Judge in the prescribed form, in time for its incorporation in English in the statements ordered to be sent up quarterly by the latter.—*Cir. Ord. 16th July 1841.*

A register to be kept by the decrees-jaree mohurrir of the court of the Judge & the P. S. A., with an abstract of all orders.

269. The column for explanations in the statements of unexecuted decrees, called for under the Circular order, No. 1100, of the 2d April last, has not been filled up, in many instances, in such a manner as to show the successive steps taken by the authorities to give effect to the decrees of the superior courts. To facilitate the preparation of the statements in a satisfactory manner, the Court are pleased to direct that a register book be kept in future by the decrees-jaree mohurrir of the Judge's and Principal Sudder Ameens's courts, in which an abstract of all orders shall be entered at the time they are passed, and the results of the orders, similarly recorded.—*Cir. Ord. 20th Aug. 1841.*

## SECTION XXII.

### *Appeals from the Sudder Courts to the Privy Council.*

Preamble

270. Whereas, by an Act passed in the fourth year of the reign of his late Majesty King William the Fourth, entitled "An Act for the better Administration of Justice in His Majesty's Privy Council," it is amongst other things enacted, that "it shall be lawful for His Majesty in Council from time to time to make any such rules and orders as may be thought fit, for the regulating the mode, form, and time of appeal to be made from the decision of the Courts of Sudder dewanny adawlut, or any other Courts of judicature, in India or elsewhere, to the eastward of the Cape of Good Hope (from the decisions of which an appeal lies to His Majesty in Council), and in like manner from time to time to make such other Regulations for the preventing delays in the making or hearing such appeals, and as to the expences attending the said appeals, and as to the amount or value of property in respect of which any such appeal may be made." And, whereas, his said late Majesty did, by his order in council, on the 16th day of January, 1836, approve certain rules and orders for regulating the mode, form, and time of appeal from the decisions of the said Courts of Sudder dewanny adawlut, and also certain Regulations for the preventing delays in the making or hearing of such appeals, and as to the expences attending such appeals; and the said rules, and orders, and regulations, were set forth in certain Schedules, A. and B., to and by the said order in council of the 16th January annexed and approved. And, whereas, his said late Majesty did, by his further order in council made on the 10th day of August, 1836, alter and amend the said Schedule B., by cancelling the rule No. 5 of the said Schedule B. so approved as aforesaid, and ordering that, in lieu of the said fifth rule thereof, a certain other rule in such last

mentioned order set forth should be substituted. And, whereas, the Queen's most excellent Majesty in Council hath deemed it expedient to cancel and rescind all the said rules, orders, and regulations, and to make and substitute others in lieu thereof.—*Rules passed by Her Majesty in Council, 10th April 1838.*

271. Her Majesty is therefore pleased, by and with the advice of her Privy Council, to cancel and rescind all the said rules, orders, and regulations in the said recited orders in council of the 16th day of January, 1836, and 10th day of August, 1836, respectively contained, and thereby or by either of them approved, and to approve of the several rules, orders, and regulations contained in the schedule hereunder written or hereunto annexed, and to order, as it is hereby ordered, that the same be respectively observed by Her Majesty's Supreme Courts of judicature at Fort William in Bengal, Fort St. George, and Bombay respectively, by the Court of judicature of Prince of Wales' Island, Singapore, and Malacca, and by the said several Courts of Sudder dewanny adawlut, and all other Courts of judicature in the territories under the Government of the East India Company, and by all persons whom it shall or may concern. Whereof the Governor General and the Council of India, the Governor of Fort William in Bengal, the Governor in Council at Fort St. George, the Governor in Council at Bombay, the Governor of Agra, the Chief Justice and the Judges of Her Majesty's Supreme Court of judicature at Fort William aforesaid, the Chief Justice and Judges of Her Majesty's Supreme Court of judicature at Fort St. George, the Chief Justice and Judges of Her Majesty's Supreme Court of judicature at Bombay, the Court of judicature of Prince of Wales' Island, Singapore, and Malacca, the Judges of the several Courts of Sudder Dewanny adawlut in the East Indies, and the Judges of all other Courts of judicature in the territories under the Government of the East India Company, and all other persons whom it may concern are to take notice and govern themselves accordingly.—*Ibid.*

Rules, orders and regulations cancelled; and the rules in the schedule approved and enacted.

272. That from and after the 31st December next, no appeal to Her Majesty, her heirs and successors in council, shall be allowed by any of Her Majesty's Supreme Courts of judicature at Fort William in Bengal, Fort St. George, Bombay, or the Court of judicature of Prince of Wales' Island, Singapore, and Malacca, or by any of the Courts of Sudder dewanny adawlut, or by any other Courts of judicature in the territories under the Government of the East India Company, unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of ten thousand Company's rupees at least; and that from and after the said 31st day of December next, the limitation of five thousand pounds sterling heretofore existing in respect of appeals from the Presidency of Fort William in Bengal, shall wholly cease and determine.—*Schedule above referred to, par. 1.*

Period within which the appeal must be made to the privy council, and the amount for which an appeal will lie.

273. That in all such cases in which any of such courts shall admit an appeal to Her Majesty, her heirs and successors in council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of ten

Courts admitting the appeal will certify the value of the matter in dispute.

thousand Company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed.—*Schedule, par. 2.*

But nothing shall derogate from the power and authority of Her Majesty to admit an appeal upon other terms

274. Provided, nevertheless, that nothing herein contained shall extend, or be construed to extend, to take away, diminish, or derogate from the undoubted power and authority of Her Majesty, her heirs and successors in council, upon the petition at any time of any party aggrieved by any judgment, decree, or decretal order of any of the aforesaid courts to admit an appeal therefrom upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as Her Majesty, her heirs and successors, shall in any such special case think fit to prescribe.—*Ibid, par. 3.*

On the arrival of the papers, an officer of the Court of Directors will give notice of it to the Clerk of the Council

275. That on the arrival of the transcripts of proceedings in an appeal to Her Majesty, her heirs and successors in council, from any of the said Courts of Sudder dewanny adawlut, or any other courts in the East Indies constituted by the East India Company, or any of their Governments from which an appeal lies to Her Majesty in Council such officer of the East India Company as the Court of Directors of the said Company shall from time to time appoint, shall forthwith give notice to the clerk of the Council thereof, stating at the same time the names of the parties to the appeal, and the date of the decree appealed from, and that such notice shall be duly registered in the Council office.—*Ibid, par. 4.*

Where those transcripts are to be kept

276. That the said transcripts of proceedings shall be kept at the East India house, or at such other convenient place within the cities of London or Westminster as the said Court of Directors shall from time to time appoint, the agents respectively conducting and defending such appeals in this country, being at liberty to take all the necessary copies and extracts from the said proceedings, and to examine the same from time to time; and it shall be the duty of such officer, by himself or his sufficient deputy, to produce the original transcripts before the Judicial Committee, upon the hearing of such appeal, upon due notice for that purpose previously given, and upon all other occasions when thereunto required by the Privy Council or the Judicial Committee.—*Ibid, par. 5.*

Penalty      fault.

277. That in default of the petition of appeal of the appellants being lodged in the Council Office within three calendar months from the registrations of the arrival of such transcripts, or in default of the appellant's case being carried in within one year from the time of such registration, the respondent shall be entitled in either case to move to dismiss the appeal for want of prosecution; and in the event of the respondent's not bringing in his case within one year from the time of such registration, the appellant shall be entitled to apply to have the case heard *ex-parte*.—*Ibid, par. 6.*

Act to amend the Act of the 3d and 4th William the 4th

278. An Act to amend an Act passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled an Act for the better Administration of Justice in his Majesty's Privy Council.

(30th June, 1845.)

Preamble

Whereas by an Act passed in the Session held in the third and fourth years of the

Reign of his late Majesty King William the Fourth, intituled an Act for the better Administration of Justice in His Majesty's Privy Council, after reciting that various appeals to His Majesty in Council from the Courts of Sudder dewanny adawlut at the several Presidencies of Calcutta, Madras, and Bombay, in the East Indies, had been admitted by the said courts, and the transcripts of the proceedings in appeal had been from time to time transmitted under the seal of the said courts through the East India Company, then called the United Company of Merchants of England trading to the East Indies, to the office of His Majesty's said Privy Council, but that the suitors in the causes so appealed had not taken the necessary measures to bring on the same to a hearing, it was enacted that it should be lawful for His Majesty in Council to give such directions to the said Company and other persons, for the purpose of bringing to a hearing before the Judicial Committee of the Privy Council the several cases appealed or thereafter to be appealed to His Majesty in Council from the several Courts of Sudder dewanny adawlut in the East Indies, and for appointing agents and counsel for the different parties in such appeals, and to make such orders for the security and payment of the costs thereof as his said Majesty in Council should think fit, and thereupon such appeals should be heard and reported on to His Majesty in Council, and should be by His Majesty in Council determined in the same manner, and the judgments, orders and decrees of His Majesty in Council thereon should be of the same force and effect, as if the same had been brought to a hearing by the direction of the parties appealing, in the usual course of proceeding : Provided always, that such last mentioned powers should not extend to any appeals from the said Courts of Sudder dewanny adawlut other than appeals in which no proceedings then had been or should thereafter be taken in England on either side for a period of two years subsequent to the admission of the appeal by such Court of Sudder dewanny adawlut : And whereas by certain orders in council, made under certain powers contained in the said Act, provision is made for registering in the Council Office, the arrival in this country of the transcripts of the proceedings in appeals from the said courts : And whereas it is considered advisable that the said Act should be amended in manner hereinafter mentioned : Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled and by the authority of the same, that the hereinbefore recited provisions of the said Act shall not apply to the case of any appeal which shall be admitted by any of the said Courts of Sudder dewanny adawlut after the first day of January, one thousand eight hundred and forty-six. — *Act of Victoria, Chap. 30, Sect. 1.*

279. And be it enacted, that any appeal to be admitted by any of the said Courts of Sudder dewanny adawlut after the said first day of January, one thousand eight hundred and forty-six, shall be considered and be held to be abandoned and withdrawn by consent of the parties thereto unless some proceedings shall be taken in England, in the same by one or more of the parties thereto within two years after registration at the Council Office of the arrival of the transcript : and any such appeal as aforesaid shall be held to be abandoned and withdrawn in like manner under any other circumstances which Her

When the appeal shall be held to be abandoned



Majesty in Council may from time to time by any orders or rules in that behalf direct to be taken and considered as a withdrawal thereof; and the East India Company are hereby required from time to time to ascertain and certify to the proper courts in the East Indies, all appeals which may from time to time become abandoned and dropped under the provisions of this clause.—*Act of Victoria, Chap. 30, Sect. 2.*

The provisions in the preceding clauses applicable to appeals from decisions passed by the provincial courts, and by the S. D. A.

280. In like manner any parties who may be desirous of appealing from the judgments passed by the Provincial courts in suits regularly appealable to the Sudder dewanny adawlut, or from the judgments of the Sudder dewanny adawlut in suits which may be regularly appealable to the King in Council, shall be at liberty to present their petition of appeal, without an authenticated copy of the decree to the court, by which the judgment may have been passed, in conformity with the provisions contained in the preceding clauses of this section.—*Reg. 26, 1811, Sect. 8, Cl. 6.*

Petitions of appeal to the king in council shall be presented to the S. D. A. within six months.

281 All persons desirous of appealing from a judgment of the Court of Sudder dewanny adawlut to the King in Council, under the authority for this purpose contained in the 21st section of the Statute 21, George III., Chapter 70, are required to present their petition of appeal to the Court of Sudder dewanny adawlut, either themselves or through one of the authorized pleaders of that court, duly empowered to present such petition in their behalf, within six calendar months from the date on which the judgment appealed against may have been passed; under which provision, and provided also the judgment appealed against shall, exclusive of costs of suit, be to the value of five thousand pounds (to be calculated as hereafter mentioned) the Court of Sudder dewanny adawlut are to admit the appeal: and proceed upon it as directed in the following sections of this Regulation under the several restrictions therein prescribed.—*Reg. 16, 1797, Sect. 2.*

And such appeal to be admitted provided the judgment appealed against shall, exclusive of costs, amount to 5,000£ [now 1000£] sterling.

Appealable sum to be computed at the rate of ten current rupees per £ sterling.

282. For the purpose of determining what causes are appealable to His Majesty in Council, under the limitation of five thousand pounds and upwards, the pound sterling shall be computed at the rate of ten current rupees, being about the medium of the usual rates of exchange; and consequently making five thousand pounds equivalent to fifty thousand current rupees or (excluding fractions) sicca rupees forty-three thousand one hundred and three. Under this computation the value of the property constituting the subject of the judgment appealed against, is to be determined according to the nature of such property, whether land, money, effects or otherwise, according to the general rules prescribed in like cases for determining the value of the same property when constituting the cause of action in the Sudder dewanny adawlut, and the several Civil courts subordinate thereto.—*Ibid, Sect. 3. [The sum has been reduced by the schedule given above to 10,000 Company's rupees.]*

Value of property to be computed according to the general rules prescribed in like cases for the guidance of the S. D. A.

S. D. A. cannot admit an appeal to the privy council after six months from the passing of the judgment appealed from.

283. The Sudder dewanny adawlut cannot admit an appeal to the judicial committee of the Privy Council after the expiration of six calendar months from the date of the judgment complained of. An application for review of judgment forms no ground for extension of period of appeal.—*Rep. Sum. Cases, 29th Sept. 1842, p. 39.*

284. No appeal lies from an *interlocutory* order of the Sudder dewanny adawlut to the Queen in Council.—*Rep. Sum. Cases, 29th June 1840, p. 45.*

No appeal lies from an interlocutory order of the S. D. A. to the privy council.

285. A party, dissatisfied with a decision of the Sudder dewanny adawlut in a case open to appeal to the Queen in Council, and applying for a review of judgment, is not of right entitled to the deduction of the time during which his application for a review of judgment may be pending in calculating the period allowed for the appeal. The Court, however, resolve that an intending appellant be permitted to file his petition of appeal merely to save his time of appeal, notwithstanding that his application for review may not have been disposed of. In such case the petitioner must recite the fact of the application for review having been made, and its being still pending, and request permission to file his petition, intimating his intention to appeal from the original decree should the application for review be rejected.—*Rules S. D. A. 17th June 1812.*

How the party must proceed if he wishes for a review of judgment in a case he intends to appeal to the privy council.

286. On the filing of the petition, the usual orders shall immediately be passed for enquiry into the validity of security for costs. In the event of the ultimate rejection of the application for review, the usual order will be passed for making a translate of the proceedings, and the appeal proceed in due course.—*Ibid.*

Orders which the S. D. A. will pass in this case.

### SECTION XXIII.

#### *Appeals to the Queen in Council—Security for Costs, or for execution or suspension of Decree.*

287. In cases of appeal to His Majesty in Council, the Court of Sudder dewanny adawlut may either order the judgment passed by them to be carried into execution taking sufficient security from the party in whose favor the same may be passed for the due performance of such order or decree as His Majesty, his heirs or successors, shall think fit to make on the appeal; or to suspend the execution of their judgment during the appeal, taking the like security in the latter case from the party left in possession of the property adjudged against him: but in all cases security is to be given by appellants to the satisfaction of the Sudder dewanny adawlut for the payment of all such costs as the said court may think likely to be incurred by the appeal, as well as for the performance of such order or judgment as His Majesty, his heirs or successors, may think fit to give thereupon; and after receiving such security, the Court of Sudder dewanny adawlut are to declare the appeal admitted, and to give notice thereof to the appellant and respondent respectively; that they may take measures the one to prosecute, the other to defend. the cause in appeal before His Majesty in Privy Council, according to the established mode of proceeding in similar cases.—*Reg. 16, 1797, Sect. 4.*

The court may either order their judgments to be carried into execution, taking security from the party in whose favor the decree may have been passed to abide the event of the appeal, or

Suspend the execution, taking the like security from the party left in possession.

Appellants in all cases to give security for payment of costs and for the performance of the final order or judgment on the appeal.

Appeal to be declared admitted on receiving such security, and notice to be given to the parties to prosecute and defend the same according to the established mode of proceeding.

288. Under the provisions of Section 11, Regulation 13 of 1808, the Sudder dewanny adawlut will direct a greater amount of security, equal to one year's produce of the adjudged property, to be entered into by the respondent during an appeal to the King in Council, than

S. D. A. will increase the amount of security beyond that which the zillah judge had admitted

what the Zillah court had accepted as good and sufficient to answer the judgment.—*Rep. Sum. Cases, 15th Aug. 1839, p. 25.*

If the court to which the appeal is preferred, see cause for allowing the appellant to retain possession, it may order the same.

289. Provided however, that if the court, to which the appeal may be preferred in such cases, shall, in any instance, see special cause for leaving the appellant in possession, during the appeal, it shall be competent to that court to order the same; requiring, in such case, from the appellant, the same security as is above required to be given by the respondent.—*Reg. 13, 1808, Sect. 11, Cl. 3.*

Parties desirous of appealing, to deliver good security for the costs that may be awarded on the appeal, including fees of pleaders, if it be intended to employ any.

No appeal to be admitted without such security, or proof of inability to find the same.

Presenting a petition of appeal, without the required security, before the expiration of the time limited for appealing declared not to preserve the right of appeal.

Security bond to be given for all costs of suit by the appellant.

It will be sent to the Zillah judge to be verified.

Course to be pursued if the appellant does not satisfy the S. D. A. in 6 months that the security is good.

Case in which, in default of giving good and sufficient security in due time, the right of appeal is forfeited.

Course to be pursued if the security is discovered to be bad.

290 In all authorized cases of appeal, the party desirous of appealing, is, with his petition of appeal, to deliver good and sufficient security for the payment of the costs that may be awarded on the appeal, including the fees of his pleader in case he shall intend to employ any on his appeal. Without such security, or without proof of inability to find the same, as required with respect to paupers by Regulation 46, 1793, no appeal shall be admitted, and in like manner as has been declared in Section 6 of Regulation 6, 1797, with respect to the fees on appeals prescribed by that Regulation: it is hereby declared, that the presenting a petition of appeal, without the security required by this section, before the expiration of the time limited for appealing, shall not be considered as preserving to the appellant his right of appeal, as far as respects the limitation in question.—*Reg. 2, 1798, Sect. 10.*

291 In cases appealed to the Queen in Council a security bond for the payment of all such costs of suit as are likely to be incurred by the appeal shall be filed with the petition of appeal, within six calendar months from the day of the date of the judgment or decree complained of, or otherwise the appellant shall not be considered to have preserved his right of appeal. The security bond shall then be sent to the Judge of the zillah, to ascertain that the same is good and sufficient, and a further period of six calendar months shall be allowed to the appellant for this purpose. If, at the expiration of that period, the appellant shall not have satisfied the Court of Sudder dewanny adawlut that the security is good, he shall be called upon to deposit in court, the amount of security required, in money or Government promissory notes, and in default of doing so within a further period of three calendar months, he shall be considered as having forfeited his right of appeal to the Queen in Council, under the provisions of Regulation 16, 1797.—*Rules S. D. A. 30th Dec. 1836, and 24th Dec. 1841.*

292 In cases in which a security bond for the payment of costs shall not be filed with the petition of appeal, or within six months from the day of the judgment or decree complained of, and the appellant shall not move the court within the above period for permission to deposit, in money or Government promissory notes, within three months from the date of the expiration of the period allowed for an appeal, the amount of security required, his appeal shall be struck off. Should he, however, move the court for permission to deposit money security, he shall be allowed three months calculated as above for that purpose, and in default of deposit shall be considered as having forfeited his right of appeal.—*Rules S. D. A. 15th July 1842.*

293. Should any security be discovered to be bad, after having been admitted by the court, the appellant shall be called upon to furnish further security and to satisfy the court that the same is good, within three calendar months, or in default of doing so, within that pe-

riod, to deposit the amount of security required in court within a further period of three calendar months, otherwise his appeal will be struck off the file of the court, and he will be considered to have forfeited all right of appeal under Regulation 16, 1797.—*Rules S. D. A. 30th Dec. 1836.*

294. With reference to the resolution of the Court it has been the practice to forward to the Zillah court the security tendered by an appellant to Her Majesty in Council, in order that it may be verified and returned to this court, the time given for such enquiry being six months, frequent intermediate returns being sent to the court, stating the progress made in the verification and ascertainment of the validity of the security.—*Cir. Ord. 25th Feb. 1842, par. 2.*

The present practice is to allow six months for verifying the security, and to send intermediate returns stating the progress made

295. In modification of the present practice, the Court intend in future to require, by their precepts in such cases, a complete return on or before the expiration of six months and to stay all intermediate returns, save one quarterly, in the English and Native languages, exhibiting what may have been done in each case, according to the form herewith annexed. This measure will save the time of the officers of the courts, sudder and mofussil, and relieve them of much unnecessary trouble.—*Ibid, par. 3.*

In future there should be one full return at the end of six months, and one quarterly return

296. At the same time the Court request that you will pay strict attention to this part of your duties, endeavouring in every instance to have the enquiries into the security completed at as early a period as possible, and taking care never to exceed the prescribed time. This is the more necessary, as the order for the complete return to be made in six months will be peremptory and unconditional, and conveying no authority to the Zillah Judge to enhance the time for enquiry, the application for which must in every instance be made to this Court. In the event of the enquiry not having been completed within the period allowed, you will state fully and specifically in your final return the cause of such incompleteness, shewing clearly the party to whose neglect it is to be attributed.—*Ibid, par. 4.*

The securities to be verified as speedily as possible. The Zillah Judge cannot enlarge the time for enquiring into the validity of them

297. You will of course not consider the foregoing orders as precluding your transmitting to the court any proceedings or reports that may be filed by the nazir, or other officer directed to make the enquiry, subsequently to the despatch of the return to be made within the period of six months.—*Ibid, par. 5.*

But this will not preclude the transmission of any reports or proceedings at the nazir, after the six months have expired.

298. I am directed to request your attention to the following rules for the guidance of the district Judges, in the investigation of the validity of the security tendered in cases of appeal to the Privy Council.—*Cir. Ord. 19th May 1843, par. 1.*

Rules for the guidance of the judges in investigating the validity of securities

299. When security bonds, for costs of appeal to England, are transmitted by the Sudder dewanny adawlut to the Zillah courts for enquiry, the Zillah courts shall take any objections offered to such bonds, enquire into them, and report on their validity, as is the practice in issue of process for execution of *ex-parte* decrees, &c.—*Ibid, par. 2.*

On the receipt of security bonds, the Zillah courts will receive and investigate any objection and report on their validity

300. Should objections be offered in time enough to admit of their being investigated, within the period of six months now allowed for the investigation into the validity of the security, the Judge will make the enquiry, and forward the record within the time prescribed.—*Ibid, par. 3.*

When into the validity of those objections if there be time before the expiry of the six months, and forward the record.

301. Should the objections however be offered at such a period as to render it impracticable to enquire into them within the six months allowed for investigation of the security, the Judge shall allow three months from the date of the expiration of the six months, to the objec-

If there be not time to examine their validity within the six months, the judge will allow three months

more; and at the end of it forward the record to the S. D. A. tor to prove his objections, on the expiration of which further period, he shall forward the record to the Sudder court.—*Cir. Ord. 19th May 1843, par. 4.*

Objections urged after the six months, inadmissible.

302. Objections urged after the expiration of the six months allowed for the investigation of the security will not be admitted by the Judge.—*Ibid, par. 5.*

When objections are offered, the judge will forward them with his order thereon to the S. D. A.

303. Whenever objections are urged to the security tendered, the Judge shall immediately forward a copy of the petition of objections, together with a copy of his order thereon, to the Sudder dewanny adawlut.—*Ibid, par. 6.*

The judge will at the same time intimate their despatch to the objector, and desire him to appear before the S. D. A. within fifteen days.

304. On the papers being ordered for despatch to the Sudder dewanny adawlut, the zillah Judge shall give intimation of the same by notice to the objector, if present, or his vakeel or agent, desiring the objector to appear, within fifteen days from the date thereof, in the Sudder dewanny adawlut, and shall forward his acknowledgment of service of notice together with the records.—*Ibid, par. 7.*

A sudder putnee talook may be received as security in such cases

305. Resolved, with the concurrence of the Western Court, that a sudder putnee talook unexceptionable in all respects, as such, shall be considered as sufficient security in cases appealed to the King in Council, to the extent of the surplus proceeds thereof.—*Con. 1004, 25th March 1836*

How the expenses incurred by the court of directors in such appeal cases are to be recovered

306. For the recovery of expenses incurred by the Court of Directors on account of appeals to the Queen in Council, the Government pleader, under instructions from the Government is to sue out execution in the Zillah or City court, in the same manner as in cases in which Government is a party.—*Rules S. D. A. 29th Sept 1837.*

The S. D. A. cannot levy costs which the decrees of the privy council do not provide for

307. The Sudder dewanny adawlut cannot levy costs in an appeal to the Privy Council which the decree of the Privy Council does not provide for.—*Rep. Sum. Cases, 11th Sept. 1840, p. 48.*

Costs are to be remitted at the exchange of the day.

308. The Governor General of India in Council having referred to the Honourable Company's attorney, in order to learn the manner in which costs when awarded by Her Majesty's Privy Council in cases of appeal from judgments of the Supreme Court of Calcutta are realized and remitted, and at what rates of exchange, has been informed that such costs, if not settled by the attorneys in England are, when the amount is realized in India, remitted at the exchange of the day.—*Govt. Ord. 11th Jan 1837*

Rule regarding the demand of interest on costs paid by the court of directors.

309. In a demand of interest on costs paid by the Court of Directors in England the Government pleader set forth in each case the rate demanded on account of interest, the opposite party being at the same time allowed an opportunity of making any objection he may entertain to the claim so asserted.—*Cir. Ord. West. C. 5th July 1839.*

Pauper appellants to the privy council must furnish two securities of 5,000 rs. each.

310. I am directed by the Court to acknowledge the receipt of your letter of the 22d ultimo, No. 680, and in reply to inform you that the Court concur in the rule of practice proposed to be adopted by the Judges of the Western Court, viz that persons wishing to appeal to the King in Council in *forma pauperis* shall be required equally with other appellants, to furnish security (malzammee) to the extent of five thousand sicca rupees, to cover the original costs of appeal; and in a further sum of five thousand sicca rupees to reimburse the Honourable the Court of Directors, any expenses to which they may be put in the event of their being called upon, under the provisions of Section 22, 3d and 4th, William IV. Cap. 41, to conduct the appeal on the part of the party.—*Con. 1032, 12th Aug. 1836.*

311. That Government promissory notes, tendered as security for costs in cases of appeal to the Privy Council, be received at their market value.—*Rules S. D. A. 25th Nov. 1842.* At what value Co.'s paper tendered as security is to be received.

312. That the amount of security in each case to be given by the appellant, be fixed at 25,000 Company's rupees.—*Ibid.* The amount of security to be given.

313. A petition praying for the admission of an appeal to the Queen in Council in *forma pauperis* to be written on stamped paper of the value of two rupees as a miscellaneous petition.—*Rules S. D. A. 15th April 1841* Stamped paper on which a petition of appeal to the P. Council in *forma pauperis* is to be written.

314. No pauper appeal to Her Majesty in Council can be admitted, unless the appellant give security to the satisfaction of the court for the payment of all such costs as the court may think liable to be incurred by the appeal, as well as for the performance of such order or judgment, as Her Majesty, her heirs or successors, may think fit to give thereupon.—*Rules S. D. A. 15th April 1831.* Extent of security required in pauper appeals

315. A person whose security had been tendered in a cause about to be appealed to the King in Council, petitions the Sudder dewanny adawlut against its acceptance, and prays that the security bond may be cancelled and returned to him. The appellant who filed the bond prays that it may be restored to him. The majority of the court held that the document should be returned to the appellant as the party by whom it was filed and a copy of it retained in the office, and rejected the petitioner's application.—*Con 524, 1th Sept. 1829* Course to be pursued when the person whose security has been tendered, petitions against its acceptance.

## SECTION XXIV

### *Appeals to the Queen in Council—Stamps—Despatch of Documents—Execution of Decrees*

316. It is hereby enacted, that from the time of the passing of this Act, no stamp duty or institution fee shall be payable in respect of any proceeding in any appeal or in respect of any paper or copy of any paper necessary for any appeal from any court of the East India Company to her Majesty in Council.—*Act XI 1839* No stamps in appeals to the privy council

317. In all cases wherein the Sudder dewanny adawlut may admit an appeal to the King in Council, they are to cause two exact copies to be made of all the proceedings held and judgments or orders given in the case appealed including the whole of the evidence and documents (translated into English, if the original documents be in any of the country languages,) and are to transmit the same as soon as prepared under their official seal, and the signature of their Register, to the Governor General in Council, for the purpose of being forwarded by the first secure and separate conveyances to His Majesty in Council. The Register to the Sudder dewanny adawlut shall also, on the application of the appellant, or respondent, furnish him or them with one or more copies of the proceedings held, and judgments or orders passed in the case appealed, provided they respectively agree to defray such expence as may be incurred thereby, but not otherwise; and the Register is not to deliver such copies when prepared without the previous payment of the expence incurred thereby, the amount of which is to be carried to the credit In all cases of appeal, two copies of all proceedings to be prepared in English, and transmitted under the official seal and signature of the Register, to the G. G. in C. to be forwarded to his majesty in council

The parties also to be furnished with copies of the proceedings on application, provided they agree to pay the expence of preparing the same.

of Government, by whom the necessary expenditure on this account will be made in the first instance.—*Reg. 16, 1797, Sect. 5.*

## Preamble

318. Whereas, it is just and necessary that the expence of preparing copies in the English language of the proceedings in cases appealed to the Queen in Council, as now required by Section 5. Regulation 16. 1797 and Section 34. Regulation 5, 1803, of the Bengal code; Section 5. Regulation 8 of 1818, of the Madras code, and Clause 6, Section 100 of Regulation 1 of 1827, of the Bombay code, should be borne by the parties prosecuting those appeals.—*Act II. 1811.*

In cases of appeal to the Queen in Council from the courts of S. D. A., the expence of preparing two copies of all the proceedings and including the evidence and documents, and of translating the same, shall be defrayed by the appellants

319. It is hereby enacted, that in all cases of appeals to the Queen in Council from judgments delivered by the Courts of Sudder dewanny adawlut at Fort William, Fort St. George, Bombay, and at Agra, the expence of preparing two copies of all the proceedings held, and judgments or orders given in the case appealed, including the whole of the evidence and documents and of translating into the English language such of the aforesaid proceedings, as may have been originally drawn out in the country languages, shall be defrayed by the parties prosecuting the appeal.—*Ibid, Sect. 1*

The said courts to require a deposit by the appellant for such expence, and not to deposit made, the appeal not be admitted

320. And it is hereby further enacted, that the Courts of Sudder dewanny adawlut are empowered and required to cause the deposit by the appellant within the time allowed for furnishing security for costs of appeal of such a sum as shall be sufficient to cover the expence of making the two aforesaid copies, and when such deposit shall have been made, and not till then, to declare the appeal admitted, and to give notice thereof to the appellant and respondent respectively.—*Ibid, Sect. 2*

Copies of any local regulation under which the judgment may have been passed, or which may have been referred to, accompany the proceedings

321. In case the judgment appealed from shall have been passed in pursuance of any local Regulation or Regulations enacted by the Governor General in Council, or in case any such Regulation shall have been referred to in the judgments passed by any of the courts wherein the cause appealed from may have been tried and decided a copy of such Regulation or Regulations or an extract therefrom containing all that has reference to the matter at issue, shall be annexed to the several copies of the proceedings prepared in conformity to the preceding section, whether for delivery to the parties, or for transmission to His Majesty in Council.—*Reg. 16 1797, Sect. 6*

Nothing herein contained to be understood to bar the exercise of his Majesty's pleasure upon all appeals to him either in rejecting or admitting such as he may think proper under the statute.

322. Provided always, that nothing in this Regulation is to be understood to bar the full and unqualified exercise of His Majesty's pleasure upon all appeals to him from the decisions of the Sudder dewanny adawlut, either in rejecting any he may consider inadmissible, under the statute respecting such appeals, or in receiving any he may judge admissible, notwithstanding the provisions made in this Regulation, which has reference to the local jurisdiction only, and particularly to that of the Sudder dewanny adawlut as a necessary rule for their guidance, subject, in the whole of its provisions, to the ultimate determination of His Majesty in Council.—*Ibid, Sect 7.*

What papers are to be translated in appeal cases

323. In appeals to the Queen in Council, only the papers specified in Section 5, Regulation 16, 1797, to be translated.—*Rules S. D. A. 3d July 1840*

324. Whenever a case appealed to Her Majesty in Council may be ordered for translation, the Register will prepare a list of the papers to be translated, and submit the same with two copies thereof to the Judge in the miscellaneous department, a copy will be given by the Judge to the pleaders of each of the parties to the suit, with instructions to file within a given time any objections to the list they may wish to make, and to state whether they are desirous of having any other papers (specifying the same) translated to accompany the record to be forwarded to England.—*Rules S. D. A. 3d July 1840.*

*Lists of papers to be translated will be prepared by the register, and given to the parties.*

325. The Court, with reference to a statement prepared in their office, of the time occupied in preparing the lists of papers for translation in cases appealed to the Privy Council, resolve that the period of one month be allowed for preparing such lists, such period to be on no account exceeded.—*Rules S. D. A. 6th May 1842.*

*One month allowed for preparing the lists.*

326. In cases in which the papers have been transmitted to England, deeds of compromise or agreement filed by the parties to be translated and forwarded in the usual manner through the Government, to the Privy Council, in order that the necessary order may be issued for striking the appeal off the file of pending appeals.—*Rules S. D. A. 2d Jan. 1834*

*Deeds of compromise or agreement how to be transmitted to England, when the papers of the case have already gone on.*

327. But in cases in which the papers of the case have not been transmitted to England, the deed of agreement may be admitted by the Sudder dewanny adawlut.—*Moore's Report, p. 1*

*Where they have not gone on, the deed of agreement need not be transmitted.*

328. I am instructed to state, that it has been usual to forward the decrees [of the Privy Council] in question to the Judges of the districts in which the cause of action may have arisen, with an order, generally to carry the same into effect, in the same manner, and under the same rules, as those prescribed for the execution of other decrees of court, leaving any party, dissatisfied with their proceedings or orders, to appeal therefrom in the usual form.—*Cal. 1066, West C. 13th Jan., Cal. C. 17th Feb. 1837.*

*The decrees of the P. Council are usually sent for execution to the judges of the districts in which the cause of action arose.*

329. I am further directed to state that the Court entirely concur in the opinion expressed in the fifth paragraph of your letter, regarding the adjudication of costs and mesne profits. Adverting, however, to the terms of His Majesty's decision, the Court are of opinion that it must be presumed to be the intention of it that the parties should be placed in precisely the situation in which they would have been but for the decree of the Sudder dewanny adawlut, and that consequently, the decree-holder is entitled upon the principle laid down in the Circular order of the 11th September, 1829, to receive from the respondent, without a fresh suit, the amount with interest of the mesne profits refunded by him by order of the Sudder court, as well as for the whole period of his subsequent dispossession, together with the costs of the appeal to the Sudder dewanny adawlut, and that the court, in the execution of the present decree, are competent to award him the same.—*Ibid.*

*Adjudication of costs and mesne profits. What the victorious respondent is entitled to.*

330. In continuation of Circular No. 13, dated the 15th May last, the Court are pleased to prescribe the following form of notice to respondents in appeal to the Privy Council, for use under Act XXIII. 1840.

*Form of notice to respondents in appeal to the privy council.*



Notice to respondent in appeal to the privy council.

NOTICE TO RESPONDENT IN APPEAL TO THE PRIVY COUNCIL.

*In the Court of Dewanny Adawlut for the Zillah Hooghly.*

Buldeb Sircar, of Amirpore, Pergunnah Zillah Kowas, Moorshedabad, *Appellant*,

*versus*

Kishen Peerya, widow of Nur Narain Roy, deceased, and guardian } *Respondent.*  
of Kishen Indur Narain Roy, infant,

*To Kishen Peerya and so forth.*

Whereas Buldeb Sircar has presented a petition of appeal to the Queen in Council, praying for the reversal of the decree of the Sudder dewanny adawlut, dated 1st January, 1846, awarding to you possession of talook Ameerabad in zillah Moorshedabad; and whereas the said Buldeb Sircar has furnished the required security and conformed to all the requisitions preliminary to the transfer of the record of the suit to England, notice is hereby given to you of the same, and further that the appeal will be considered and held to be abandoned and withdrawn by consent of the parties thereto unless some proceedings shall be taken in England the same by one or more of the parties thereto, within two years after registration at the Council Office of the arrival of the transcript or copy of the record, and you are hereby required to acknowledge the receipt of this notice.

Given under my hand and the seal of the court this —.

A. B., *Judge*.

—*Cir. Ord 26th Dec. 1846.*

SECTION XXV.

*Officers of the Sudder Court.*

When govt may appoint an unappointed servant, deputy register, &c. the court will assign them their duties.

331. It is hereby enacted, that whenever the Governor of Bengal, and the Lieutenant Governor, or other authority exercising the powers of Lieutenant Governor, of the North-Western Provinces, shall deem it expedient to appoint any persons, not being covenanted servants, to the offices of Deputy Register or Assistant Register to the Court of Sudder dewanny and Nizamut adawlut at Calcutta and Allahabad respectively, it shall be competent to those courts to assign to the officers abovenamed, any duties at present performed by their Registers.—*Act VII. 1840*

Duties allotted under the above Act to Mr. Kirkpatrick, the deputy register, and Mr. Stuart, the first assistant

332. With reference to the provisions of Act VII. of 1840, the Court resolve :—That the Deputy Register Mr. Kirkpatrick be empowered to sign circulars, and attest copies of papers given to parties on stamped paper, and also to perform the duties entrusted by this resolution to the first assistant in the event of the absence of the latter, and that Mr. Stuart, the first assistant be empowered to sign precepts and attest copies of papers on plain paper, issued under orders of the Court, or retained among the records of the Court.—*Cir. Ord. 3d April 1840.*

Duties allotted to Bahoo Ramgobind Shome, appointed deputy register, under the above act

333. I am directed to inform you that Bahoo Ramgobind Shome, who has been appointed Deputy Register under Act VII. 1840, has been charged, by a resolution of the Court of this day's date, with the duty of issuing requisitions to the subordinate courts in all matters connected with the preparation of causes and the execution of decrees of the Sudder dewanny

adawlut. You will be pleased to give the same attention to the roobukarees of that officer, as to any other requisitions issued under their authority.—*Cir. Ord. 7th Jan. 1842.*

334. The Deputy Register shall address the zillah authorities by roobukaree without precept.—*Rules S. D. A. 21st Jan. 1842, Sect. 26.*

How the deputy register will address the zillah authorities.

335. The Courts of Sudder dewanny adawlut and Nizamut adawlut, the Provincial courts of appeal and circuit, the Boards of Revenue and Trade, and the Board of Commissioners in the Western Provinces, shall hereafter exercise, without reporting their proceedings for the sanction of Government, the power of appointing, removing and accepting the resignation of the principal ministerial Native officers acting under them respectively, as well as all other Native officers on their respective establishments, excepting the law officers attached to the Courts of Sudder dewanny adawlut and Nizamut adawlut; whose nomination, removal, and resignation, shall be reported as heretofore for the previous sanction of the Governor General in Council.—*Reg. 8, 1809, Sect. 3.*

Powers vested in the principal judicial, revenue & commercial authorities, respecting the removal and appointment of native officers.

336. If any person shall prefer a charge of corruption or extortion against a ministerial officer of any Civil or Criminal court of judicature under this section, and the charge shall not be proved, the accused is to have the option of suing the accuser for damages in any Court of civil judicature to which he may be amenable.—*Reg. 13, 1793, Sect. 9, Cl. 12.—Benares Reg. 11, 1795, Sect. 2.—Ced. and Conq. Prov. Reg. 11, 1803, Sect. 8, Cl. 1.*

Officers at liberty to prosecute persons preferring groundless charges against them under this section.

337. The rules prescribed in Section 9, Regulation 13, 1793, respecting charges of corruption or extortion lodged against the Native ministerial officers of the Civil and Criminal courts, are to be held applicable to charges of a similar nature that may be preferred against the Hindoo or Mahomedan law officers of the several courts, with the following qualifications.—*Reg. 12, 1793, Sect. 8, Cl. 1.*

Courts how to proceed in charges of corruption or extortion that may be preferred against law officers.

338. The several officers of Government in the judicial, revenue, and commercial departments, and in the departments of salt, opium, and customs, who are already restricted by their official oaths, or by the known declarations and orders of Government, from deriving any personal advantage whatever from their fixed establishments of Native officers, are further hereby positively prohibited from making any alteration whatever in the distribution of the salaries of such officers, or in the number and designation of the several descriptions of Native officers, which now compose, or may hereafter compose, their authorized establishments, without the express sanction of the Governor General in Council.—*Reg. 5, 1804, Sect. 23.*

Officers of government specified, prohibited from making any alteration in the fixed distribution of salaries of native officers, or in their number & designation, without the sanction of government.

339. The nazirs of the several Courts of judicature, civil and criminal, shall be allowed, as heretofore, to appoint their own naibs, and the mirdahs and peons, or any similar descriptions of public servants employed under their immediate direction and control; and to fill up all vacancies, which, from time to time, may occur in such appointments, subject to the approbation of the Judges and Magistrates superintending the courts to which they are attached, and to the responsibility prescribed by Section 2, Regulation 13, 1793, and Section 2, Regulation 12, 1803, for the good behaviour of the naibs,

Nazirs of the courts of judicature allowed to appoint certain public servants employed under them, and to fill up vacancies subject to the approbation of the judges and magistrates, and to the responsibility prescribed by sec. 2, reg. 13, 1793, and sec. 2, reg.

12, 1803. They may also remove such servants on stating sufficient cause to the satisfaction of the judge or magistrate.

mirdahs, peons, and others appointed by them. They may also, as hitherto, remove the persons so appointed by them, provided they can state sufficient cause to the satisfaction of the Judge and Magistrate; but not without his previous knowledge and sanction.—*Reg. 5, 1804, Sect. 12.*

The law officers of the S. D. A. and N. A. how to be appointed and removed.

340. The appointment and removal of the law officers of the Sudder dewanny adawlut and Nizamut adawlut shall be reported as heretofore for the previous sanction of the Governor General in Council, subject to the further provisions contained in the present Regulation.—*Reg. 11, 1826, Sect. 3.*

*The rules regarding securities to be taken from the treasurers and nazirs of Zillah courts are equally applicable to the same officers of the Sudder court.*

## SECTION XXVI.

### *Copies of Papers to be given to the Parties*

The register is authorised to grant copies of papers in the native languages, applying to the court for special orders in cases of doubt.

341. The Register of the Sudder dewanny adawlut is authorised to grant copies of papers from the department in the Native language, applying for the Court's special orders in cases in which he may doubt the propriety of granting them.—*Rules S. D. A. 24th Aug. 1832.*

Applications for English papers will be submitted to the court.

342. The Register is to lay all applications for copies of letters, reports, minutes, &c. in the department in the English language before the Court for their orders.—*Ibid.*

Copies of decrees of the court taken out as precedents, by other than the parties to the suit, may be written on an eight anna stamp.

343. The question having been put to the Court by the Register whether copies of decrees of the Sudder court taken out as precedents, by other than the parties to the suit, should be written on stamped paper of four picees or eight annas value, the Court passed the following resolution.—*Resolution.*—The Court having had before them the Register's note of the 5th instant, are of opinion, that the practice which has hitherto prevailed of granting copies of decrees when not required by the parties on stamped paper, value eight annas, should not be interfered with.—*Rules S. D. A. 12th Feb. 1836.*

The register will not grant copies of the roobukarees of the judges, but only of the final decision.

344. The Register is not authorized to grant attested copies of the roobukarees of the Judges, in which their individual opinions as to the merits of cases are recorded, but only copies of the final decision.—*Rules S. D. A. 24th Sept. 1811.*

Explanation of the term "final decision"—the above rule applies to cases finally disposed of by the court.

345. The following orders were passed by the Court in continuation of their resolution dated 24th September, 1811. That the term "final decision" in the above resolution refers not to the mere roobukaree of the Judge passing final judgment, but to the decree embodying the details of the case, and the collective opinions of the Judges in those cases in which more than one opinion has been recorded. This order refers to cases finally disposed of by the court.—*Rules S. D. A. 8th July 1842, Sect. 1.*

In cases remanded to the lower courts a copy may be granted of the last order remanding the case.

346. That in cases remanded to the lower courts for re-investigation, a copy may be granted of the last order remanding the case; and that in such cases, it is not necessary for the party who applies for a copy, also to take copies of the opinions or orders of any other Judges who may have sat in the same case.—*Ibid, Sect. 2.*

347. That in miscellaneous cases disposed of by the court at sittings of more than one Judge, copies shall not be granted of any single Judge's order or opinion; but the applicant shall be required to take copies of all the opinions that may have been recorded in consecutive order, on pieces of stamped paper joined to each other.—*Rules S. D. A. 8th July 1842, Sect. 3.*

Rule regarding copies of the opinions of the judges in miscellaneous cases.

348. That as a general rule no copy shall be granted of any roobukaree in cases either regular or miscellaneous, containing the opinion of a Judge which is not the final or deciding opinion in the case. Copies of single roobukarees may be granted under the second of the rules now adopted, and in miscellaneous cases decided by a single Judge.—*Ibid, Sect. 4.*

No copy of an opinion, in cases regular or miscellaneous, should be granted except the final or deciding opinion.

349. The above rules do not apply to intermediate orders of form, or others which do not contain the *opinions* or *decisions* of the Judges of the court.—*Ibid, Sect. 5.*

To what these rules do not apply

350. Minutes recorded by the Judges of the court on a question of general importance and submitted to Government, are not to be considered as public documents; consequently copies should not be granted to private individuals on their application.—*Con. 718, 21st Sept. 1832*

Minutes recorded by the judges are not public documents, & copies will not be granted to private individuals

## SECTION XXVII.

### *Translations made for the Sudder Court*

351. The office of translator to the Courts of Sudder dewanny adawlut and Nizamat adawlut is abolished; and any translations which may be hereafter required by either court, are to be made by the Register and his Assistants, or, if at any time their other official avocations should not admit of their making the requisite translations, the court is empowered to cause the same to be made by any other competent person, as authorised, with respect to trials referred to the Nizamat adawlut, by Section 3, Regulation 10, 1799.—*Reg. 2, 1801, Sect. 17.*

The office of translator to the S. D. A. and N. A. abolished; and such translations as may be requisite in future how to be made.

352. It is the province of the Registers and Assistants to the Provincial, Zillah, and City courts, to make all translations required from these courts respectively, and it is expected they will at all times perform this duty, as far as may be in their power, consistently with the due discharge of their other duties. But if at any time their other public avocations will not admit of their preparing the translates of proceedings required to be transmitted to the Sudder dewanny adawlut, within the prescribed period, the Judges of the respective courts are to represent the same to the Sudder dewanny adawlut, with information of the period required to enable their Registers and Assistants to make such translations without material impediment to the discharge of their other duties; and if the Sudder dewanny adawlut shall judge it necessary to have the translation before them at an earlier period, they are empowered to authorize the employment of any person or persons, possessing an adequate knowledge of the original language, to make such translations, subject to the revision of the Register of the Provincial, Zillah, or City court from which such translation may be demandable, who, in all such instances, is to countersign the translation, as compared by him, and will be held responsible for the accuracy of it.—*Reg. 19, 1797, Sect. 4.*

All translations required from the courts, to be made by their registers and assistants whenever it may be practicable.

When their other public duties will not admit of their preparing the translates, the judges are to report the circumstance to the S. D. A., who, if they deem it necessary, will authorize the to employ other persons to make the translates subject to the revision of the register, who is to be responsible for their accuracy

Repeals sec. 5 of  
reg. 19, 1797, & reg.  
1 of 1803.

353. Whereas, the rules regarding the rate of payment for translations of proceedings and other documents for the use of the Civil courts fixed by Section 5, Regulation 19, 1797, and Section 33, Regulation 4, 1803, of the Bengal code, require amendment.—It is hereby enacted, that Section 5, Regulation 19, 1797, and Section 33, Regulation 4, 1803, be repealed.—*Act VII. 1842.*

By whom translations of Bengalee papers in the record of an appealed case, are to be made

354. Translations of Bengalee papers in the record of an appealed case, made at the special request of the appellant, should be made at his expence, in all other cases by mohurrirs of the court or hired mohurrirs at the cost of Government, only papers material to the issue should be translated — *Con. 699, 29th June 1832.*

## SECTION XXVIII.

### *Transcription and Transmission of Papers for the Court.*

Record, including original papers in the cause appealed, to be transmitted to the register to the S. D. A. in 15 days after the receipt of the appeal.

Copies of all the original papers transmitted, attested by the sheristadar to be deposited amongst the records of the court.

Copies to be deemed records, and to be received in evidence.

Copies of original papers to be sent to the S. D. A., where the originals cannot be sent, for the reasons herein specified

Recorded copies of original papers not forthcoming to be deemed the originals, and copies of them to be forwarded and certified as herein required.

355. The court, within fifteen days after the receipt of the appeal, are to certify under their hands and the seal of the court to the Register of the Sudder dewanny adawlut, the record duly made up and authenticated, including the original petition of appeal, and answer of the parties, the original papers and documents received from the Zillah or City court, the original depositions, (where any may have been taken before the Provincial court) exhibits, and every original paper read in the cause. Previous to transmitting the abovementioned papers to the Sudder dewanny adawlut, the Provincial court are to cause true and faithful copies of all the originals, authenticated by the sheristadar, or head Native officer of the court, to be made out and deposited in the court in lieu of the originals. The copies are to be deemed records of the court, and are to be received in evidence in any other court. In cases where any original depositions, or other original proceedings or matter whatsoever, shall have been previously entered in any Provincial court, in any book which may likewise contain either proceedings in other distinct causes, or any other matter, so that such original papers cannot be transmitted to the Sudder dewanny adawlut without the other proceedings or matters, the court within the time and in the manner before directed, is to certify a true and authentic copy of such original papers, and that the original of each copy transmitted is so entered in such book. But they are nevertheless to transmit the original petition of appeal, the original answer, or other separate pleadings of the parties, and the original exhibits which shall have been delivered in, or produced by the parties and read in the course of the cause before the court, if they be forthcoming, in the manner before required. In cases where any original paper shall have been mislaid or lost, and a copy of it shall have been entered in any book or proceedings, the copy is to be deemed the original, and the court is to transmit a copy of it to the Sudder dewanny adawlut, and in like manner to certify it, and that after due search the original cannot be found.—*Reg. 6, 1793, Sect. 11 — Benares Reg. 10, 1795, Sect. 2.—Ced. and Conq. Prov. Reg. 5, 1803, Sect. 11.*

356. The rules contained in Section 13, Regulation 5, and in Section 11, Regulation 6, 1793, are hereby modified. In transmitting the record in cases of appeal, as therein provided, it shall be sufficient for the Zillah or City, or Provincial courts as the case may be, to transmit the original pleadings, depositions, and exhibits filed in the case with a list of them, and it shall not be necessary, in the first instance, to transmit the applications and processes for the attendance of witnesses, the returns of the nazir and other miscellaneous papers and proceedings not material to the trial of the appeal. Provided however, that it shall at all times be competent to the court to which the appeal shall have been made, to call for such miscellaneous papers, or to direct the parties to produce copies of the same, should the court think it necessary to refer to them.—*Reg. 9, 1831, Sect. 8.*

Rules relating to the transmission of records in cases of appeal, modified.

Proviso.

357. I am directed to request that in future you will submit all applications and bills for the entertainment of temporary mohurrirs to copy proceedings in cases appealed to this court whom it may be necessary to employ in consequence of a press of business or other cause, to this court. After approval, the bills will be countersigned by the Register of the court, and returned to you as authority for the Civil Auditor. The rate of pay for extra mohurrirs will not exceed ten rupees per mensem. You will of course be careful that applications of the nature alluded to, are made only in cases of urgent and unavoidable necessity.—*Civ. Ord. 24th Nov. 1837.*

Employment and remuneration of temporary mohurrirs to copy the proceedings of cases appealed to the sudder court

358. The Court being apprehensive that the mode of payment for temporary mohurrirs employed in copying proceedings of appealed cases, which was prescribed by the Circular order, No. 217 of the 24th November, 1837, may lead to an increase of expence as well as loss of time, are pleased to direct that in future all such copies be paid for at section rates, viz. 1,000 words per Company's rupee for copying, whether the proceedings be in Persian, Oordoo or Bengalee.—*Civ. Ord. 24th June 1839, par. 1.*

Rate at which the papers thus copied will be paid for.

You are requested to specify in the bills which you send for audit, the proceedings which are charged for, and the number of words in each case; and each nuthee forwarded to the Court is to be accompanied with a memorandum under the signature of your serishtadar, of the number of words contained in it, and the exact sum which has been paid for copying it.—*Ibid, par. 2.*

The proceedings charged for, and the number of words in each case, are to be distinctly specified, and the serishtadar will certify the exact sum paid.

360. The foregoing rules are to be considered applicable to cases called for by the Court, direct from the court of the Principal Sudder Ameen, to whom you are requested to communicate instructions accordingly, directing him at the same time to apply to you for permission to employ extra mohurrirs when the officers on his own establishment are unable to make the required copies.—*Ibid, par. 3.*

These rules are also applicable to cases called for by the S. D. A. from the P. S. A.

361. I am directed by the Court to request that the memorandum under the signature of the serishtadar, required by the Circular order, No. 40, 24th June, 1839, may be submitted in duplicate according to the subjoined form, one certificate being attached to the bill for extra mohurrirs, and the other to the nuthee. You are requested not to forward the bills until after the despatch of the nuthees charged for. It is unnecessary to send English letters with the bills.

The memorandum under the signature of the serishtadar will be submitted in duplicate.

Form of memoran-  
dum

নথীর নকলকরণি। ব্যক্তি যেরূপ মেহনতানার যে সর্টিফিকেট কলিকাতা শহরের সদর দেওয়ানী আদালতে প্রেরণ করা যায় তাহার নকশা। ১৮৪১ সাল তারিখ ৯ জুন।

যোকদ্দমার নয়র	উভয় পক্ষের নাম	যোকদ্দমার খোলসি।	তানদাদের কথা	তানদাদের মেহনতানা	লেগকদের নাম
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—*Cr. Ord. 13th Aug 1841.*

When references are made to the court copies of documents will be sent instead of the original papers, when the originals are sent, copies will be made by the officer sending them.

362 In consequence of public officers, when making references to this Court, sending, instead of copies as heretofore, original papers which they request may be returned, much inconvenience has of late been experienced, arising from the delay which the examination of the copies prepared in this office occasions in the dispatch of the regular current business, I am, therefore, directed by the Court to request that, on such occasions you will send the copies, except when you may think it more proper to send originals; in which case, if you deem it necessary to preserve copies for record in your own office, you will be pleased to have them prepared before submitting the originals.—*Cr. Ord. 16th Nov. 1833.*

## SECTION XXIX.

### *Correspondence of the Sudder Court with parties*

S. D. A. not to correspond with parties in suits, or any person, respecting matters before the court, or cognizable by it

363. The Sudder dewanny adawlut is prohibited corresponding by letter with parties in suits or process or matters depending before them, or coming within their cognizance. If a party in a suit, or any person amenable to the jurisdiction of the court, shall have any matter to represent to the court, he is either to appear in the court in person, and represent the matter in writing, or to make the representation in writing through an authorized vakel. The court are to pass whatever order upon the representation may appear to them proper consistently with the Regulations, and to cause a copy of the order to be delivered to the person making the representation, or to his vakel, under the seal of the court, and attested by the Register.—*Reg. 6. 1793, Sect. 6.—Benares Reg. 10. 1795, Sect. 2.—Ced. and Cong. Prov. Reg 5, 1803, Sect. 6.*

## SECTION XXX.

### *Construction of the Regulations by the Sudder Courts.*

Zillah & city judges and magistrates may state objections to precepts of the provincial courts, or courts of circuit if considered contrary to, or unwarranted by, the regulations. And suspend execution till receipt of a second precept.

364. In all instances wherein a precept issued by a Provincial court of appeal, or a Court of circuit, to a zillah or city Judge or Magistrate, shall appear to such Judge or Magistrate to be contrary to, or unwarranted by, the existing Regulations, he is authorized to state to the Provincial court, or Court of circuit, in what respects he considers their precept to be in deviation from the Regulations, and suspend execution till receipt of a second precept in reply to his objections. But if the second precept of the Provincial court, or Court of circuit, in reply to the objections of the zillah or city Judge or Magis-

trate, shall confirm their first precept in whole or in part, and shall require the zillah or city Judge or Magistrate to execute the same without further reference, he shall immediately comply with such requisition. In case, however, the second precept of the Provincial court, or Court of circuit, should not satisfy the zillah or city Judge or Magistrate, that the Regulations have been rightly construed by the Provincial court, or Court of circuit, he is at liberty at the same time that he certifies the execution of the order of the Provincial court, or Court of circuit, to request that they will transmit copies of their precepts to him and his returns thereto, with such other papers as may be necessary for the information of the circumstances of the case, to the Court of Sudder dewanny adawlut, or to the Court of Nizamut adawlut, according as the case in question may relate to the civil or criminal department; and the Provincial court or Court of circuit shall accordingly transmit such papers, as requested, without any unnecessary delay. Provided, nevertheless, that nothing in this Regulation be understood to authorize any zillah or city Judge or Magistrate to question the propriety of any order issued by a Provincial court, or Court of circuit, in cases clearly left to the discretion and judgment of the Provincial court, or Court of circuit, by the Regulations; the reference to them, and eventually to the Courts of Sudder dewanny and Nizamut adawlut, meant to be authorized by this Regulation, being confined to cases in which the sense of the Regulations, from a difference of construction or otherwise, may appear doubtful and uncertain. --*Reg.* 10, 1796, *Sect.* 2.

Second precept to be carried into immediate execution if required.

But the zillah or city judge or magistrate may for his satisfaction request a reference of the case to the nizamut or S. D. A.

Provido.

Excepting cases clearly left by the regulations to the discretion and judgment of the prov. courts, or courts of circuit

365. In all instances wherein a reference to the Court of Sudder dewanny adawlut, or the Nizamut adawlut, may be made under the preceding rule, the determination of those Courts, who are empowered to prescribe the forms and conduct to be observed by the Provincial, Zillah, and City courts of Dewanny adawlut, the Courts of circuit, and the zillah and city Magistrates, in all cases provided for by the Regulations agreeably to their construction thereof, is to be held final and conclusive.--*Ibid.* *Sect.* 3

Determination of the Nizamut or S. D. A. to be conclusive

366. Should any doubt occur to the Sudder dewanny, or the Nizamut adawlut, with respect to the meaning of any part of the Regulations, or should it appear to them, on occasion of any reference from the Provincial, Zillah or City courts, the Courts of circuit, or the zillah or city Magistrates, that the Regulations do not sufficiently provide for the case submitted to their decision, they are in the former case, to report the circumstances of it to the Governor General in Council that a new Regulation may be framed in explanation of such doubt; and in the latter case, are to propose a new Regulation in the manner prescribed by Regulation 20, 1793.--*Ibid.* *Sect.* 4.

N and S D A to report to the G. G. in any case in which they have doubts on the meaning of the regulations.

Or if the case be not provided for by the regulations to propose a new regulation agreeably to regulation 20, 1793.

367. On the first point, I am directed to communicate to you the opinion of the Court, that the Regulation above cited was only intended to apply to difference of opinion relative to the proper construction of Regulations in miscellaneous matters, and not to the provisions of a decree; the remedy against which, if deemed erroneous by either of the parties interested, consists in appeal or review, to be applied for in the mode prescribed by the Regulations.--*Con.* 479, 18th April 1828, *par.* 3.

The above regulation applies to difference of opinion regarding the construction of regulations in miscellaneous matters, not to the provisions of a decree.



Course of procedure where a reference is made respecting the meaning of any regulation to either court of Sudder Dewanny.

368. In modification of Section 3, Regulation 10, 1796, Section 3, Regulation 22, 1803, and corresponding enactments, and with a view to preserve uniformity in the interpretation of the law, it is hereby provided, that in all instances wherein a reference respecting the meaning and intent of any Regulation may be made to either Court of Sudder dewanny adawlut or Nizamut adawlut under Section 2 of the abovementioned enactments, or otherwise, the court shall respectively communicate such reference with their sentiments thereon, each to the other; and no construction on the point so referred, shall be promulgated, until the same shall have received the sanction of both courts.—*Govt. Resolutions, 22d Nov. 1831.*

## APPENDIX.

### SALES OF LAND AND PROPERTY FOR ARREARS OF REVENUE.

1. Whereas it is deemed expedient, with a view to the benefit of the agricultural community, to regulate the number of periodical sales of estates for arrears of revenue; to discontinue the levy of interest and penalty upon such arrears; to provide for the sale at fixed and known periods of mohals, the whole of the land revenue due from which may not have been discharged on or by appointed days; and otherwise to amend the laws for the realization of the land revenue;—It is hereby enacted, that Section 2, Regulation 14, 1793; Section 2, Regulation 3, 1794; Regulation 11, 1822, except Sections 36 and 38, and Regulation 7, 1830, are rescinded, except in so far as they rescind other Regulations or parts of Regulations.—*Act XII. 1841, Sect. 1.*

Repeals sec. 2, reg. 14, 1793; sec. 2, reg. 3, 1794; reg. 11, 1822, except sec. 36 & 38, and reg. 7, 1830.

2. And it is hereby enacted, that there shall be no demand of interest or penalty upon any arrear of land revenue which shall fall due after the date specified in Section 35 of this Act.—*Ibid, Sect. 2.*

No demand shall be made of interest or penalty upon arrear of land revenue after the 1st January, 1842.  
Preamble.

3. Whereas it is found expedient to amend the existing law for the realization of the land revenue,—It is hereby enacted, that from the last day of February, 1845, the third and following sections of Act No. XII. of 1841 are repealed.—*Act I 1845, Sect. 1.*

4. And it is hereby enacted, that if the whole or a portion of a kist or instalment of any month of the era according to which the settlement and kistbandy of any mahal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.—*Ibid, Sect. 2.*

If the whole or a portion of a kist of any month be unpaid on the first of the following month, it is to be considered an arrear.

5. In compliance with a suggestion of the Court of Sudder dewanny adawlut, the Sudder Board of Revenue desire me to request that you will bring to the notice of the Collectors of your division, that the new sale law (as indeed was the case with Regulation 11 of 1822,) has reference only to arrears of Government revenue, or other claims of Government recoverable as arrears of revenue; and that the rules in force for the sale of lands in execution of decrees of court are those prescribed in Regulation 45, 1793.\*—*Cir. Ord. S. Bd. Rev 27th April 1842.*

The new sale law has reference only to arrears of govt revenue, or claims recoverable as arrears of revenue

6. And it is hereby enacted, that, upon the promulgation of this Act, the Sudder Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands, which by the Regulations and Acts in force are directed to be realized in the same manner as arrears of revenue, shall be paid up in each permanently settled district or zillah under their jurisdiction, in default of which payment the estates in

S. B. of revenue for each permanently settled district or zillah, shall fix the days for sale of mohals for arrears, and give notice thereof in the official Gazettes; and direct corresponding notice in various courts. The days so

\* See also Regulation 12 of 1796, and Circular order No. 25, September 20, 1841. But Regulation 45, 1793 has been repealed, and Act IV. 1846 substituted for it.

need will not be changed without fresh notifications, &c

Period of the notification

Form in which the advertisements of estates sold for arrears of revenue are to be drawn up

arrear in those districts, except as hereinafter provided, shall be sold at public auction, to the highest bidder. And the said board shall give notice of the dates so fixed in the official *Gazettes*, and shall direct corresponding publication to be made as far as regards each district, in the language of that district, in the office of the Collector, or Deputy Collector, or other officer duly authorized to hold sales under this Act, in the courts of the Judge, Magistrate, (or Joint Magistrate, as the case may be.) Principal Sudder Ameer, Sudder Ameer, and Moonsiff, and at every thannah station of that district; and the dates so fixed shall not be changed except by the said board by advertisement and notifications, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are to take effect.—*Act I 1845, Sect. 3.*

7 The Sudder Board of Revenue having observed a want of uniformity and precision in the advertisements of estates to be sold for arrears of revenue under Act I. of 1845, published in the *Government Gazettes*, commencing with the 2d instant, and in some cases a misapprehension of the law on the part of the Collector,\* direct me to enjoin that all future such advertisements shall be made in the following form.

#### FORM

Notice is hereby given, under Section 6, Act No. 1 1845, that the undermentioned estates in zillah ——— will be put to public and unreserved sale at the Collector's office of that district on ——— the ——— day of ———, 184—, for arrears of revenue, and other demands which by the Regulations and Acts in force are directed to be realized in the same manner as arrears of revenue, due on the ——— day of ———, 184—.

No. of class	Class of mahal	No. of the mahal on the district rent roll, or register	Name of mahal	Recorded proprietor	Sudder amount	Balance due on the — day of —, 184—	Remarks
I	Permanently settled estates						<p>If a portion only of an estate is to be sold, it should be noticed in this column.</p> <p>Collectors will be pleased to observe that estates of classes 2, 3, 4, 5 and 6, cannot be sold, (&amp; consequently cannot be included in this advertisement) otherwise than after the notification prescribed by section 5 of the Act.</p>
II	Estates not permanently settled						
III	Estates in arrears on account of years antecedent to the current & preceding year						
IV	Estates to be sold on account of other estates						
V	Estates under attachment by order of a judicial authority						
VI	Estates to be sold on account of demands recoverable in the same manner as arrears of revenue						

—*Civ. Ord. S. Bd. Rev. 18th April 1845*

\* For instance, the Collector of Mymensing and the Deputy Collector of Baneorah advertise the sales as conditional on the arrears not being intermediately liquidated obviously misconceiving or overlooking the first principle of the sale law, viz. that no arrears are to be received after the fixed last day of payment, and the very object of the advertisement, viz. to give notice of estates to be *unreservedly* sold.

8. And it is hereby enacted, that in districts not permanently settled and in the province of Benares no sale shall take place for arrears of land revenue or other demands of Government without the special sanction of the Sudder Board of Revenue previously obtained in each several case of sale. Provided, that the said board at the time of authorising such sale shall fix the latest day on which in each case such arrears or demands shall be received.—*Act I. 1845, Sect. 4.*

*In districts not permanently settled and in Benares, no sale will take place without the special sanction of the S B of revenue in each several case*

9. Provided always, and it is hereby enacted, that no estates shall be sold for the recovery of arrears or demands, of the descriptions mentioned below, otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment, according to section 3 or 4 of this Act as the case may be, in the office of the Collector, or other officer duly authorized to hold sales under this Act, in the court of the Judge within whose jurisdiction the land advertised lies, in the courts of the Principal Sudder Ameen and Sudder Ameen of the district, and in the Moonseef's court and Police thanmah of the division in which the estate to which the notification relates, or a part of it, is situated, the same to be certified by the receipt of the officer at whose office such notification may have been affixed; and also at the cutcherry of the malgouzar of the estate, or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose.

*No estates shall be sold for arrears of ar descriptions, except after 15 days' notification, specifying the nature and amount of the arrears or demand, in various public courts and offices in the district. Notification will declare the latest period at which payment or tender may be made.*

*First.*—Arrears due from estates in the province of Benares.

*Secondly.*—Arrears due from estates not permanently settled

*Thirdly.*—Arrears other than those of the current or of the preceding year

*Fourthly.*—Arrears due on account of estates other than that to be sold.

*Fifthly.*—Arrears of estates under attachment by order of any judicial authority

*Sixthly.*—Arrears due on account of meevae, poolbundee or other demands, not being land revenue, but recoverable by the same process as arrears of land revenue — *Ibid, Sect. 5.*

10. With reference to an instance brought to the notice of the Court of Sudder dewanny adawlut for the North-Western Provinces of the unobtainment of a sale on account of revenue arrears in consequence of delay that occurred in a Judge's office in forwarding the notices of sale prescribed by Section 8, Act XII 1841, as soon as received from the Collector to the lower courts, the Court call the attention of the Civil courts to the necessity of using despatch and avoiding all delay in the distribution, affixation, and certificate of receipt of sale notices sent under the provisions above quoted. Judges will be pleased to call the attention of the subordinate courts to this Circular.—*Cur. Ord. S. Bd. Rev. 2d Dec. 1842, pars. 1 and 2.*

*No delay whatever is to be allowed to take place, in the distribution or affixation of these notices, in the various courts of the district*

11. And it is hereby enacted, that the Collector or other officer duly authorised to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in Section 3 or 4 of this Act, issue notifications in the language of the district, to be affixed in his own office, and in the court of the Judge of the district, and to be published in the official *Gazettes*, specifying the estate or estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall

*Collector will then notify in various ways and places the estates to be sold and the day of sale. All estates so specified will be put up, and sold to the highest bidder. No payment or tender after sunset of the latest day will be of avail*

not be less than fifteen or more than thirty clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid. And except, as hereinafter provided, all estates so specified, shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector, or other officer as aforesaid, and shall be sold to the highest bidder. And no payment or tender of payment, made subsequent to sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.—*Act I. 1845, Sect. 6.*

This notice of sale will be published in the language of the district, and according to the form prescribed by the board's circular, both in the English and Vernacular Gazette.

12. In continuation of Circular order, No. 9, of the 19th of April last, and to obviate the variety of practice which appears to prevail on the subject, I am desired by the Sudder Board of Revenue to request that you will instruct the several Collectors of your division that the notice of sale enjoined by Section 6, Act I. of 1845, should be published in the language of the district, and according to the form prescribed by the board's Circular above quoted, both in the English and the Vernacular *Government Gazette*, and that an English version of the notice, in the said form, should also be published in the *English Gazette*.—*Cor. Ord. S. Bd. Rev. 20th June 1845.*

The official sale advertisements in the Bengalee language to be sent direct to Serampore.

13. Inconvenience and delay having arisen from the practice adopted by Collectors of sending their official sale advertisements, both English and Bengalee, in the first instance, to the *Calcutta Gazette* press, I am directed by the Sudder Board of Revenue, to request that you will instruct those officers to transmit the Bengalee copy in future direct to Mr. Marshman at Serampore, and the English version, as heretofore, to the address of the printer of the *Calcutta Military Orphan Press*.—*Cor. Ord. S. Bd. Rev. 7th Nov. 1845.*

When an estate is thus notified, a proclamation will be put up in various places forbidding the ryots to pay rent to the defaulting proprietor.

14. And it is hereby enacted, that whenever an estate is notified for sale as provided by Section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation in the language of the district, in his own office, and as soon thereafter as may be in the Moonsiff's courts and Police thannahs within which the estate, or any part of it, is situated, and also at the cutcherry of the malgoozar of the estate, or at some conspicuous place upon the estate, forbidding the ryots and under-tenants to pay rent to the defaulting proprietor or proprietors from the date of the day after that fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid after the date aforesaid.—*Act I. 1845, Sect. 7.*

No claim to abatement or remission, on any ground, will bar or void a sale unless it stands in his name alone & without dispute, and the collector has refused to bring it to account.

15. And it is hereby enacted, that no claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government shall bar a sale, or render this Act void or voidable; nor shall the plea that money belonging to the defaulter, and sufficient to pay the balance or part of it was in the Collector's hands, bar a sale or render a sale under this Act void or voidable, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, the Collector shall have neglected, or refused on insufficient grounds to transfer it the credit of the estate.—*Ibid, Sect. 8.*

\* Persons not proprietors may, before sunset of the day

16. And it is hereby enacted, that Collectors shall, at any time before sunset of the latest day of payment, receive as a deposit from any party not being a proprietor of

the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate at sunset as aforesaid, unless before that time the arrear shall have been liquidated by a proprietor of the estate. And in case the party so depositing, whose money shall have been credited to the estate in the manner aforesaid, shall be a plaintiff in a suit pending before a Court of justice for the possession of the same or any part thereof, it shall be competent to the Judge of the zillah in which such estate is situated, to order the said party to be put into temporary possession of the said estate, subject to the rules in force for taking security in the cases of appellants and defendants. And if the party depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil court that the deposit was made in order to protect an interest of the said party, which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit with interest, from the proprietors of the said estate.—*Act I. 1815. Sect. 9.*

preceding the fixed sale day, deposit the amount of the arrear of revenue. If a suitor, he may be put in possession under the usual rules; or if he made the deposit to protect an interest, he may recover the amount with interest, from the proprietors of the estate.

17. And it is hereby enacted, that no estate shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards, and no estate, the sole property of a minor or minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation 6, 1822. shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them shall have attained the full age of 18 years. And no estate held under attachment by the revenue authorities otherwise than by order of a judicial authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no estate held under attachment by a revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.—*Ibid, Sect. 10.*

No estate shall be liable to sale for arrears accruing while it was under the court of wards, nor any minor estates of which that court has not taken the management; and no estate attached by the revenue authorities, until after the end of the year in which the arrears accrued.

18. And it is hereby enacted, that it shall be competent to the Collector at any time before the sale of an estate shall have commenced to exempt such estate from sale; and in like manner it shall be competent to the Commissioner of Revenue at any time before the sale of an estate shall have commenced, to exempt such estate from sale, by a special order to the Collector to that effect in each case; and no sale of an estate shall be legal if held after the receipt of an order of exemption in respect to such estate; provided, however, and it is hereby enacted, that the Collector or Commissioner shall duly record in a proceeding the reason for granting such exemption: and provided, also, that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale.—*Ibid, Sect. 11.*

The collector & the commissioner may, for special reasons to be recorded, exempt an estate from sale.

19. And it is hereby enacted, that sales shall ordinarily be made by the Collector or other officer duly authorized by Government in that behalf in the land revenue cutcherry at the sudder station of the district; provided however, that it shall be compe-

Sales to be made at the cutcherry of the collector, unless otherwise ordered by the sudder board.

tent to the Sudder Board to prescribe a place for holding sales other than such cutcherry whenever they shall consider it beneficial to the parties concerned.—*Act. I. 1845, Sect. 12.*

Rules regarding the power of uncovenanted deputy collector to hold sales.

20. With reference to your letter No. 207 of the 6th June last, submitting, in consequence of a reference from Government the board's opinion on the power of uncovenanted Deputy Collectors to hold sales under Act XII. 1841, I am directed by the Honourable the Deputy Governor of Bengal to request that the following rules may in future be observed on the subject.—*Cir. Ord. S. Bd. Rev. 24th Oct. 1842, par. 1.*

Express authority from Govt. necessary to authorize the uncovenanted deputy collector to hold sales. What the application will specify

21. No uncovenanted Deputy Collector should be allowed to hold sales without express authority from Government in each instance, if there be time to obtain authority. The application for authority should specify the name of the Deputy Collector who may have been selected for the purpose, and if there be more than one such officer in the district, the reasons for the selection. *Ibid, par. 2*

When, in case of urgency, the Commissioner empowers an uncovenanted deputy collector to hold the sales, a report must be made on the subject.

22. If owing to urgent circumstances, the Commissioner, or in cases still more urgent, the Collector find it necessary to empower a Deputy Collector, without previous reference to higher authority, to hold sales under Clause 6, Act XII. 1841, a report of the circumstances is immediately to be made, through the proper channel, for the confirmation of Government.—*Ibid, par. 3*

If the collector is unable from sickness, or other cause, to commence the sale, or to complete it on the day fixed, he may adjourn it to the next day, not being Sunday or a holiday

23. And it is hereby enacted that in case the Collector, or other officer as aforesaid, shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry, and so on, from day to day, until he shall be able to commence upon, or to complete the sale, but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.—*Ibid Sect. 13*

Estates to be sold in the order in which they stand on the towjee

24. And it is hereby enacted, that on the day of sale fixed according to Section 6 of this Act, sales shall proceed in regular order, the estate to be sold bearing the lowest number on the towjee or registers in use in the Collector's office of the district being put up first, and so on, in regular sequence, and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in Section 15 of this Act.—*Ibid, Sect. 14*

Exception.

Purchaser to deposit in cash, bank notes, post bills, or Govt. securities, 25 per cent, of his purchase money, or in default, the estate to be put up again

25. And it is hereby enacted, that the party who shall be declared the purchaser of an estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate as the Collector may think necessary, either in cash, Bank of Bengal notes, or post bills, or Government securities duly endorsed, 25 per cent. on the amount of his bid, and in default of such deposit, the estate shall forthwith be put up again and sold.—*Ibid, Sect. 15.*

26. I am directed by the Sudder Board of Revenue to request that you will intimate to the Collectors and independent Deputy Collectors of your division, that "when Government securities are taken as deposit under Section 15, Act XII. of 1841, they must be received at such value as will be sufficient, if brought to sale, to meet the amount for which they are deposited."\* Collectors will of course understand that Government securities are not a legal tender in payment of purchase-money, or of any public demand; they are receivable only in deposit to secure a certain amount, which must be paid, when due, in the legal currency of the country. —*Cir. Ord. S. Bd. Rev. 27th April 1842*

Value at which government securities are to be taken.

27. And it is hereby enacted, that the full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth: and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the estate shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate, or to any part of the sum for which it may subsequently be sold: and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and it shall be so levied and credited to the defaulting proprietor of the estate sold, and if default of payment of purchase-money shall have occurred more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale shall be made after notification and in the forms prescribed by Section 6 of this Act, and that such notification shall not be issued until the expiration of three clear days after the day on which the default shall have occurred. Provided also, that payment or tender of payment by or on behalf of the proprietor of the arrear for which the estate was first sold, and of the arrear which may have subsequently become due, if such payment or tender of payment be made before sunset of the day preceding the day of the notification of re-sale, and after the defaulting purchaser shall have made the deposit required by Section 15 of this Act, shall bar such re-sale. —*Act I 1845, Sect. 16.*

The full purchase money to be paid in 30 days from the day of sale, or, in default of deposit to be forfeited, and estate sold again, and the loss on the re-sale to be borne by the defaultier.

Re-sale to be made in forms prescribed by section 6

Tender of payment by the original proprietor, will bar the re-sale

28. And it is hereby enacted, that it shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section 16, or if preferred to the Collector for transmission to the Commissioner on or before the tenth day from the day of sale, and not otherwise: and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an estate made under this Act, which shall appear to him not to have been conducted according to the provisions of this Act, awarding at the same time to the purchaser a payment from the proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed interest, at the current rate of Government securities on

Commissioners of revenue may receive an appeal within 15 days after the sale & annul the sale, & award compensation in certain cases to the purchaser, but not exceeding the interest on his deposit

\* Orders of Government of India in the Financial Department, 23d March, 1842



the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office and the order of the Commissioner shall, in such cases, be final—*Act I. 1815, Sect 17.*

In case of hardship or injustice, the Com may suspend passing final orders, and represent the case to the B. of R., who may recommend Govt to annul the sale & restore the estate.

29. And it is hereby enacted, that it shall be competent to the Commissioner of Revenue on the ground of hardship or injustice to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Sudder Board of Revenue, who, if they see cause, may recommend to the local Government to annul the sale, and the local Government in any such case, may annul the sale, and cause the estate to be restored to the proprietor on such conditions as may appear equitable and proper.—*Ibid. Sect. 18.*

Sales to be final, unless appealed against, at noon of the 30th day from the day of sale.

After what date a sale is final against which an appeal has been made and dismissed.

30. And it is hereby enacted, that all sales of which the purchase-money has been paid up as prescribed in Section 16 of this Act, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.—*Ibid. Sect. 19.*

The collector to give the purchaser a certificate of title.

Form of certificate.

Transfer to be proclaimed in various catcheries.

Purchase-money how to be applied.

31. And it is hereby enacted, that immediately upon a sale becoming final and conclusive, the Collector or other officer as aforesaid, shall give to the purchaser a certificate of title in the following form:—"I certify that A. B. has purchased, at public auction, under Act No. I. of 1815, mehal C., and that his purchase has taken effect on and since the — day of — [being the date of the day after that fixed for the last day of payment.] (Signed) D. E., Collector." And the said certificate shall be deemed in any Court of justice sufficient evidence of the title to the estate sold being vested in the person or persons named from the date specified; and the Collector shall also notify such transfer by written proclamation in his own catchery, and in those of the Moonsiff and Darogah of the jurisdictions within which any part of the estate sold shall be situated, and also at the catchery of the malgouzar of the estate, or on some conspicuous place on the estate; and shall apply the purchase-money first to the liquidation of all arrears due upon the latest day of payment; and, secondly, to the liquidation of all outstanding demands debited to the mehal in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate sold, to be paid to their receipt on demand, in the manner following:—"To wit, in shares proportioned to their recorded interest in the estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors, upon their joint receipt, provided that if prior to payment of any surplus that may remain of the purchase-money after liquidation of all Government arrears and dues to the proprietor of the estate sold, or his representative, the same may be claimed by creditors in satisfaction of debts due by him to them, or by any one creditor, such surplus shall not be payable to any such claimant, nor shall it be withheld from the proprietor by attachment, except under precept, and in satisfaction

of decrees of court for such debts. And if the balance of purchase-money have in any such case been paid away in liquidation of the proprietor's just debts by order of any court, and a decree shall afterwards pass for annulling the sale, the proprietor shall not be restored to possession until the amount so paid away be returned by him with interest.—*Act I. 1845, Sect. 20.*

32. And it is hereby enacted, that any suit brought to onst the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.—*Ibid, Sect. 21.*

Any suit to onst the certified purchaser on the ground that the purchase was made for another, to be dismissed with costs.

33. And it is hereby enacted, that the annulment of a sale by a Commissioner shall be publicly notified by the Collector or other officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by Section 20 of this Act, and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser, with interest thereon, at the highest rate of the current public securities, from the dates on which they were respectively paid in, to the date on which the refund is actually made.—*Ibid, Sect. 22.*

How the annulment of a sale by the Com is to be notified by the collector. Purchase money to be returned to the purchaser, with interest.

34. And it is hereby enacted, that the party certified as the proprietor of an estate by purchase at public sale for the recovery of arrears of revenue shall be answerable for all instalments of the revenue of Government which may fall due subsequently to the latest day of payment aforesaid.—*Ibid, Sect. 23.*

Party certified as the proprietor shall be answerable for the revenue which may fall due after the latest day of payment.

35. And it is hereby enacted, that no sale for arrears of revenue or other demands realizable in the same manner, made after the taking effect of this Act, shall be set aside by a Court of justice except upon the ground of its having been made contrary to the provisions of this Act: and except the contravention thereto shall have been declared and specified in an appeal made to the Commissioner under Section 17 of this Act, and except the action in the Civil court be instituted within one year from the date of the sale becoming final and conclusive as provided in Section 19 of this Act, and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money: provided, however, and it is hereby enacted, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or circumstance connected with a sale under this Act, from his remedy in a personal action for damages against the individual by whose act or omission he considers himself to have been wronged.—*Ibid, Sect. 24.*

The sale not to be set aside, by the civil courts, unless contrary to the provisions of this Act.

Sale not to be contested by any person who has received a part of the purchase money.

Any person aggrieved by the sale, may have his action for damages.

36. And it is hereby enacted, that in the event of a sale being reversed by a final decree of a Court of justice, the purchase-money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public securities.—*Ibid, Sect. 25.*

If the sale is reversed by a civil court, the purchase money shall be repaid by govt with interest.

37. And it is hereby enacted, that the purchaser of an estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled districts of Bengal, Behar, Orissa, and Benares, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be

The purchaser shall acquire the estate free from encumbrances, and may enhance the rents of under-tenants, and eject the tenants, except in *per* specified cases.

entitled, after notice given under Section 10, Regulation 5, 1812, to enhance at discretion, (any thing in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said estate, and to eject all tenants thereof, with the following exceptions: *First*.—Tenures which were held as istimreree or mokureree at a fixed rent more than twelve years before the permanent settlement. *Secondly*.—Tenures existing at the time of the Decennial Settlement, which have not been, or may not be, proved to be liable to increase of assessment on the grounds stated in Section 51, Regulation 8 of 1793. *Thirdly*.—Lands held by khodkhas, or kudeemee ryots, having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force. *Fourthly*.—Lands held under *bona fide* leases, at fair rents, temporary or perpetual for the erection of dwelling houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases. *Fifthly*.—Farms granted in good faith at fair rents and for specified areas by a former proprietor, for terms not exceeding twenty years, under written leases, registered within a month from their date, provided that a written notice, specifying full particulars of the position, rent and area of the lands, the terms of the lease, and the names of the parties, shall at the same time be given by the latter to the Collector in every case, and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the public revenue will be materially affected thereby. The exception declared in this clause shall not extend to leases objected to by the Collector, by a notification to be fixed up in his office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also, that a purchaser of an estate at a sale for arrears of revenue shall be at liberty by a suit in court to set aside all such farms, although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith at fair rents. —Act I 1815, Sect. 26.

The purchaser shall take the estate free from encumbrances imposed subsequent to the last settlement, and may annul all tenures or agreements subsequent to it.

38. And it is hereby enacted, that the purchaser of an estate sold under this Act for the recovery of arrears due on account of the same in districts other than those mentioned in Section 26, shall acquire the estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or created by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bona fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided, that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons whose tenure or agreement

Proviso, against the purchaser demanding a higher amount of rent than was demanded by the landlord.

may be annulled as aforesaid than was demandable by the former malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates by special favor, or for a consideration of the like, or in cases in which it may be proved that according to the custom of the purgunnah, mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.—*Act I. 1815, Sect. 27.*

39. And it is hereby enacted, that it shall be competent to the local Government when it shall seem proper at any time before a sale for arrear shall have been actually made, to direct it to be made, subject to the leases, assignments, or other encumbrances, with which a proprietor in possession, his ancestors, or predecessors may have burthened his assessed estate, or to such of them as shall appear proper. In all such cases, notice of the condition imposed by the local Government shall be given by the Collector at the time of calling up the lot for sale, and such further notification shall be made as the local Government may direct: provided, however, that in case the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or there shall appear ground to apprehend, that by reason of the restriction the future realization of the revenue will be endangered, it shall be competent to the local Government at any time before such restricted sale shall have become final and conclusive in the manner laid down in Section 19 of this Act, to direct the sale to be cancelled, and a new sale of the estate to be made without other restrictions than those contained in the exceptions specified in Clauses 1 to 5 of Section 26 of this Act. If, after the sale has become final and conclusive, occasion should again arise to bring to sale for arrears an estate purchased with a restriction of the above description, it shall at all times be competent to the local Government to direct that the *mehal* shall be sold without any other restriction than those contained in the exceptions specified in Clauses 1 to 5 of Section 26 of this Act, or with the reservation before reserved. In the former event, should the purchase-money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall further be competent to the local Government to direct a portion, or the whole of the excess, to be paid to persons whose interests having been reserved at the first, shall become void at the second sale.—*Ibid, Sect. 28.*

40. And it is hereby enacted, that excepting copartners of estates under butwarrah who may have saved their shares from sale under Sections 33 and 34, Regulation 19, 1814, any recorded or unrecorded proprietor or copartner who may purchase in his own name or in the name of another the estate of which he is proprietor or copartner; or who by re-purchase or otherwise, may recover possession of the said estate after it has been sold for arrears under this Act; and, likewise, any purchaser of an estate sold for other arrears or demands than those accruing upon itself, shall by such purchase acquire the estates subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to ryots and under-tenants which were not

mer malgoozar, except where rent was reduced by abatements granted by special favour of such malgoozar.

Before the sale is made, govt. may direct it to be made subject to leases, assignments or other encumbrances

Notice of such condition to be given, but such restricted sale may be cancelled, & a re-sale without restrictions made, except in specified cases, if the future realization of the revenue is endangered.

An estate once sold subject to encumbrances may, at any future sale, be sold without restriction

Excepting copartners under butwarrah, any proprietor of an estate purchasing it himself, shall recover it subject to all encumbrances

Estates sold for arrears due in respect of other estates shall be taken subject to encumbrances.

possessed by the previous proprietor at the time of the sale of the said estate.—*Act I. 1845, Sect. 29.*

Arrears of rent due from tenants to the defaulter at the date of sale may be recovered by any process, except distraint.

41. And it is hereby enacted, that arrears of rent, which, on the *latest* day of payment, may be due to the defaulter from his tenants, shall, in the event of a sale, be recoverable by him after the said *latest* day by any process except distraint which might have been used by him for that purpose on or before the said latest day.—*Ibid, Sect. 30.*

Any collector, in respect to sales, may punish contempt with a fine of 200 rupees, commutable to one month's imprisonment, and subject to an appeal to the revenue commissioners.

42. And it is hereby enacted, that any Collector or officer exercising the powers of Collector, in respect to sale, shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine to an extent not exceeding Co.'s Rs. 200, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector as afore-said, shall carry his sentence into effect, provided, that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.—*Ibid, Sect. 31.*

A default to make good a bid by paying the deposit shall be held a contempt.

43. And it is hereby enacted, that a default to make good a bid by making the deposit required by Section 15 of this Act, shall be held to be a contempt.—*Ibid, Sect. 32.*

Act to be confined to Bengal, Behar, Orissa and Benares, & to the Ceded & Conquered provinces, & not to extend to Calcutta or the Straits Settlements.

44. And it is hereby enacted, that the operation of this Act shall be confined to the provinces of Bengal, Behar, Orissa and Benares, now subject to the General Regulations, and to the Ceded and Conquered Provinces similarly subject to the General Regulations, under the Government of the Presidencies of Fort William in Bengal, and nothing in this Act contained shall affect land in the town of Calcutta, or the settlements of Singapore, Penang, or Malacca.—*Ibid, Sect. 33.*

#### *Decisions of the Sudder Court in reference to the Sales for Arrears of Public Revenue.*

The collector cannot issue a pottah to a moonsiff to sell personal property and houses attached for arrears.

45. The Presidency Court held, on a reference from the Judge of Dacca, that a Collector is not competent without application to the Judge, to issue a pottah to a Moonsiff to sell personal property and houses attached by his nazir for arrears of public revenue.—(*On. 989, Cal. C. 24th Nov., West. C. 26th Dec. 1835.*)

Case in which the shares of an estate were deemed to have received part of the purchase money, and were thus precluded from contesting the validity of the sale.

16. Of several sharers of an estate sold for arrears of revenue, one received his share of the surplus proceeds; two others moved the Commissioner of Revenue and the Civil court to have their shares applied to the satisfaction of decrees against them; the shares of the rest were similarly applied after issue of notice to them, and no objection offered. Held that, under Clause J, Section 27, Regulation 11, 1822, [*corresponding with Act I. 1845,*] the sale could not be contested by any of the sharers.—*S. D. A. Sel. Rep. 3d Aug. 1846, vol. 7, p. 271.*

The same subject.

47. Suit to reverse a revenue sale; judgment of lower court, dismissing the claim, upheld in appeal; plaintiff having allowed part of the proceeds to be applied to his benefit, without objection made, after confirmation of the sale by the Revenue Board, although he had opposed such application before hand.—*S. D. A. Sel. Rep. 8th Feb. 1848.*

48. A suit against an auction purchaser and the late proprietor, by a person claiming an interest in land sold by a Collector for public arrears and delivered to the purchaser, must be instituted and proceeded on as a regular suit.—*Con.* 469, 8th Feb. 1828.

A suit against an auction purchaser, & the late proprietor, must be instituted as a regular suit.

49. The mere fact of an estate having been sold at a public sale for arrears of revenue, does not exempt the purchaser from liability to an action for mesne profits during the period of his possession, in the event of the sale being set aside by a civil action.—*S. D. A. Sel. Rep.* 30th June 1842, vol. 7, p. 107.

If a sale is set aside in the civil courts, the purchaser is still liable to an action for mesne profits during his possession.

50. Property, supposed to belong to a public defaulter, being attached and about to be sold, in satisfaction of dues of Government, should another person claim that property, it is sufficient that previously to the sale a summary enquiry be made into the merits of the claim. A formal investigation is not in the first instance necessary. But it is at the option of the claimant to institute subsequently a regular suit; and if his title be proved the sale will be void, and the property adjudged to him, with costs.—*S. D. A. Sel. Rep.* 25th Nov. 1815, vol. 2, p. 162.

Course to be pursued if property belonging to a defaulter, when attached and about to be sold, is claimed by another party.

51. An auction sale of a defaulter's lands, set aside on the ground that the Collector had purchased the lands on account of Government, and that he had refused a higher bid. Plea that the latter circumstance could only entitle the defaulter to compensation, overruled.—*S. D. A. Sel. Rep.* 17th May 1824, vol. 3, p. 351.

Auction sale of lands set aside because the collector had purchased them on account of govt and refused a higher bid.

52. A public sale annulled, on the ground that villages assessed at the decennial assessment as distinct *mehals* in the name of different persons, though they may subsequently become the property of one and the same individual, cannot legally be sold to realize balances of revenue as a single estate, unless an union of estates had been formally applied for and effected under Section 6, Regulation 25, 1793, and Section 6, Regulation 19, 1814.—*S. D. A. Sel. Rep.* 12th Dec. 1829, vol. 4, p. 348.

A sale annulled because mehals assessed separately at the decennial settlement were sold as a single estate, though no union of estates had been made under the regulation.

53. A sale may be annulled by reason of its having been made on a day different from that which was advertised.—*S. D. A. Sel. Rep.* 14th April 1821, vol. 3, p. 68.

A sale may be annulled if made on a day different from that advertised.

54. A revenue sale of an estate is set aside on the suit of part only of the owners.—*S. D. A. Sel. Rep.* 29th July 1834, vol. 5, p. 358.

A sale set aside on the suit of part only of the owners.

55. Judgment of lower court in favor of plaintiff, affirmed, and sale set aside on the suit of one only of the owners.—*Ibid.*

Sale set aside on the suit of only one of the owners.

56. On a claim by A, to hold, at a fixed rent, certain lands in a *mahal* purchased at public sale by B, judgment for A, on proof of an hereditary right to the tenure. B declared at liberty to relinquish his purchase, in consequence of the rent of those lands having been erroneously described at the time of sale.—*S. D. A. Sel. Rep.* 23d Jan. 1807, vol. 1, p. 176.

A purchaser at liberty to relinquish his purchase because the rent was not accurately described at the time of sale.

57. Suit to reverse the sale of an estate sold for arrears of revenue. The plea was, that the estate sold for a demand in excess of what was due, notwithstanding tender of the real balance before proceeding to sale.—*S. D. A. Sel. Rep.* 9th March 1818.

Suit to reverse the sale, because it was sold for a demand of more than was due, the real balance having been tendered.

58. Payment by the Civil court of the debts of a co-sharer out of the proceeds of sale, held not to bar a right of action by plaintiff, who was not shown to have acquiesced in any way, either expressly or tacitly, in such payment.—*Ibid.*

Payment by the civil court of the debts of a co-sharer from the proceeds of sale does not bar the plaintiff's right of action, he not having agreed to the payment.

59. The purchasers of an estate sold for arrears of revenue, having relinquished it on the reversal of the sale by a decree of Zillah court, the Collector alone appealed. Held that the

Collector cannot deduct from the amount of purchase

money, the sum due for revenue, between relinquishment of the estate, and the dismissal of the appeal against the reversal of the sale. Collector was not justified in deducting from the amount of purchase money, the sum due on account of Government revenue for the period intervening between the date of the relinquishment of the estate by the purchasers and that of dismissal of his appeal against the reversal of the sale.—*S. D. A. Sel. Rep. 9th March 1848.*

## PREVENTION OF AFFRAYS CONCERNING LAND, AND RELIEF IN CASES OF FORCIBLE DISPOSSESSION.

### Preamble

1 Whereas it is expedient to remove doubts which have arisen upon the interpretation of Regulation 15 of 1824, and to amend the law for preventing affrays concerning the possession of land and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others.—*Act IV. 1840.*

Repeals reg. 49, 1793; reg. 11, 1796; reg. 32, 1803; sec. 5, reg. 6, 1813; reg. 15, 1824; reg. 2, 1829; & so much of any reg. extending the above, &c.

2. It is hereby enacted, that Regulation 49 of 1793; Regulation 11 of 1795; Regulation 32 of 1803; Section 5, Regulation 6 of 1813; Regulation 15 of 1824, and Regulation 2 of 1829, of the Bengal code, together with so much of any Regulations as extends any of the above Regulations or parts of Regulations to any places within the Presidency of Fort William in Bengal, be repealed.—*Ibid. Sect. 1.*

If magistrate is certified of a probable breach of peace from dispute concerning any land, water, &c., he shall record a proceeding, &c. and call all parties concerned to attend his court, &c. & to state their claims, &c. Magistrate, without reference to the merits, shall ascertain who was in possession, and declare him entitled to retain, until duly ousted, &c.

3. And it is hereby enacted, that whenever any Magistrate or other officer exercising the powers of a Magistrate may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots or other persons) to attend his court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the Magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to enquire what party was in possession of the subject of dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the Magistrate or other officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.—*Ibid. Sect. 2.*

Magistrate, if unable to satisfy himself as to who was in possession, may attach the subject of dispute until the rights are determined, &c.

4. And it is hereby enacted, that if the Magistrate or other officer as aforesaid shall, in the cases mentioned in Section 2 of this Act, be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent

court, giving the Collector information of the attachment ; and if the subject of dispute be land, the provisions of Regulation 5 of 1827, regarding attachment by order of a Zillah or City court shall apply to attachments by order of a Magistrate or other officer as aforesaid made under this section.—*Act IV. 1840, Sect. 3.*

5. And it is hereby enacted, that if any party shall complain to a Magistrate or other officer as aforesaid, that he has been without authority of law forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land within the jurisdiction of such Magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependant talookdar, farmer, under-farmer, ryot or otherwise, the Magistrate or other officer as aforesaid shall require the party or parties complained against, and any other parties concerned, to appear and make defence in person or by agent within a reasonable time ; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding, ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court : provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.—*Ibid, Sect. 4.*

Magistrate to summon parties complained against for having taken forcible possession ; party complaining to be restored if complaint is substantiated, until the right is determined.

6. And, whereas, by Section 4 of Act IV. of 1840 it is enacted, that if any party shall complain to a Magistrate, or other officer exercising the powers of a Magistrate, that he has been without authority of law forcibly dispossessed of any land, premises, water, fisheries, crops or other produce of land, within the jurisdiction of such Magistrate, or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependant talookdar, farmer, under-farmer, ryot, or otherwise, the Magistrate, or other officer as aforesaid, shall require the parties complained against, and any other parties concerned, to appear and make defence in person or by agent within a reasonable time ; and if after the examination of the necessary witnesses and documents the complaint appears to him to be substantiated, he shall record a proceeding ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court ; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession. And, whereas it is just that when the party complaining is a Native officer or soldier, a longer period than one month from the time of dispossession should be allowed for preferring his claim : it is therefore hereby enacted, that so much of the above recited Section of Act IV. of 1840, as provides that no such order as is therein mentioned shall be passed unless the party complaining of having been dispossessed in the manner therein mentioned prefer his claim within one month from the time of such dispossession, is repealed so far as regards complaints preferred by Native officers or soldiers.—*Act XV. 1845, Sect. 6.*

If the party dispossessed be a native officer or soldier, a longer period than a month is to be allowed him for preferring his claim.



Such period shall be allowed the native officer or soldier as the magistrate considers reasonable

7. And it is hereby enacted, that no such order as is mentioned in the above recited Section of Act IV. of 1840, shall be passed, when the party complaining of having been dispossessed is a Native officer or soldier unless such party prefer his claim within such period as may be considered by the Magistrate reasonable, with reference to the distance of the party and the difficulty of communication.—*Act XV. 1845, Sect. 7.*

In case of newly formed land whereof no one ever had possession, magistrate shall award possession to party entitled

8. And it is hereby enacted, that if, in cases instituted under this Act, the subject of dispute be newly formed land, whereof it shall appear to the Magistrate or other officer as aforesaid that no party has ever had possession, the Magistrate or other officer as aforesaid shall award possession to the party to whom the right of possession belongs according to law or custom, and shall maintain that party in possession until the right to possession be determined by a competent Court.—*Act IV. 1840, Sect. 5.*

Disputes concerning use of land are to be decided in like manner, subject to trial of right of use Magistrate not to interfere unless right has been exercised within 3 months, &c

9. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the Magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies may enquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said Magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the Magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the enquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.—*Ibid, Sect. 6*

Persons opposing by force the execution of orders under this Act, &c and persons aiding and abetting, &c to be imprisoned not exceeding six months, or fined not exceeding 300 rs, commutable to a period not exceeding six months

10. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall, together with all persons aiding and abetting, be liable, on conviction before a Magistrate or other officer with the powers of a Magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, commutable if not paid to a period of simple imprisonment not exceeding six months, or to both imprisonment and fine as aforesaid.—*Ibid, Sect. 7*

Orders under this Act may be appealed against, &c

11. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the Regulations and laws that are or may be in force relating to appeals from the orders of Magistrates or other officers exercising the powers of Magistrates.—*Ibid, Sect. 8.*

Magistrate, with consent of parties, may refer the matter in dispute to arbitration.

12. And it is hereby enacted, that in cases instituted under this Act the Magistrate or other officer as aforesaid is authorised, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbi-

trators for decision, whose award shall be executed as if it were the award of such Magistrate or other officer as aforesaid.—*Act IV. 1840, Sect. 9.*

13. And it is hereby provided that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties.—*Ibid.* This Act not to affect the legal exercise of right of attachment or seizure.  
*Sect. 10.*

14. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William in Bengal, or to the Settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.—*Ibid.* Act not to extend beyond presidency of Fort William, nor to Straits settlements, nor to any place within local limits of supreme court  
*Sect. 11.*

15. It is hereby enacted, that in the territories subject to the Presidency of Fort William in Bengal, Assistant Magistrates vested with special powers, shall be competent to decide cases under the provisions of Act IV. of 1840, when such cases are referred to them by the Magistrates to whom they are subordinate, and that such Assistants shall deal with such cases in the same way as Magistrates are competent to deal with them under the said Act.—*Act XXVII. 1845, Sect. 1.* Assistant magistrates vested with special powers, may decide cases under Act 4 of 1840, when referred to them.

16. Provided always, that the Magistrates may at all times refer from such Assistants any depending cases which may have been referred to them under this Act, and which for the more speedy administration of justice or for any other reason, the Magistrates may deem it proper to determine themselves in the first instance —*Ibid.* Magistrates may always refer cases thus referred, from their Assistants.  
*Sect. 2*

17. I am directed by the Court to inform you that it has been ruled, in supersession of Construction 1314, that none but Magistrates, Joint-Magistrates, and persons lawfully exercising the powers of a Magistrate, can decide suits under Act IV. of 1840.—*Cal. Ord. 29th Feb 1845* What officers may decide suits under Act 4 of 1840.

18. And it is hereby enacted, that Magistrates are prohibited from taking cognizance under Act IV. of 1840 of boundary disputes of the nature for which provision is here made, [that is in the North West Provinces] but whenever they have reason to apprehend any breach of the peace in consequence of a disputed boundary, they shall certify the circumstances to the Collector of land revenue, who shall be bound immediately to mark off the boundary in the mode here indicated, and to uphold the possession of the parties according to the demarkation.—*Act I 1847, Sect. 6* Magistrates cannot, under Act 4 of 1840, take cognizance of boundary disputes under Act 1 of 1817

19. In a dispute between a proprietor of an estate, and a mortgagee of an orchard situated therein, the Magistrate of Bareilly, considering the possession of the latter to have been satisfactorily established directed him to be maintained in possession. The proprietor appealed, and the Session Judge reversed the decision of the Magistrate, directed him to maintain the proprietor in possession, and referred the mortgagee to the Civil court.—*Con. 1366, West. C. 2d, Cal. C. 23d Dec. 1842.* In a dispute between a proprietor of an estate and the mortgagee of an orchard in it, the civil court ordered the magistrate to maintain the proprietor in possession and refer the mortgagee to the civil court

20. A Magistrate may interfere in disputes between mortgagers and mortgagees, when such disputes appear likely to terminate in a breach of the peace; and it does not in any way affect the question, whether the mortgage have been registered or not.—*Con. 1006, West. C. 15th April, Cal. C. 20th May 1836.* Magistrate may interfere in disputes between mortgager and mortgagee where there is likely to be a breach of the peace.

A magistrate cannot attach, or require a collector to attach lands paying revenue, before the decision of a case under Act 4 of 1840

21. Held, on a reference from the Session Judge of 24-Purgunnahs, that a Magistrate is not authorised to attach lands, (paying revenue to Government, or under-tenures,) pending the decision of a case under Act IV. of 1840, or to call on the Collector to attach lands according to Regulation 5 of 1827, before he has come to a decision in a case under the above Act.—*Con. 1347, Cal. C. 24th June, West. C. 2d Aug. 1842.*

Duty of the magistrate, where in a suit under Act 4 of 1840, an auction purchaser pleads that he is exercising his legal rights

22. The Magistrate of Nudda was of opinion, with reference to Sections 7—10, Regulation 5, 1812, and Sections 32 and 33, Regulation 11, 1822, that the auction purchaser of an estate could not cancel putnee talooks, created by the former proprietor, by merely attaching them, without having previously established his right to do so in a Court of justice; and adverting to Act IV. 1840, he saw no resource but to refer the auction purchaser to the "usual legal mode of obtaining possession." Held, that where, in a suit instituted under Act IV. 1840, an auction purchaser of an estate pleads that he is exercising his legal right, it will be the duty of the Magistrate, under Section 10 of that enactment, to satisfy himself whether the contested tenure is of that description which is protected by law, and that, in cases in which the tenure is not of that description, the purchaser is not obliged to apply to any court for the enforcement of his rights.—*Con. 1312, Cal. C. 2d Oct., West. C. 26th Nov. 1841.*

How disputes of zemindars and kuthenadars for the right of management and collection of estates should be governed in reference to Act 4, 1840

23. Disputes between zemindars and kuthenadars, not for possession of defined portions of land, but for the right of management and collection of estates, should be governed by Section 10, Act IV. 1840; the zemindar who possesses the right of attachment should be held in possession—the other party being referred to a civil suit to determine whether the zemindar has justly exercised that right.—*Con. 1333, West. C. 15th April, Cal. C. 27th May 1842.*

Resolution of the S. N. A. of the extent to which the provisions of Act 4 of 1840 are applicable

24. The Court transmit for the information and guidance of the criminal authorities, copy of a Resolution recorded by them and concurred in by the Nizamut Adawlut for the North Western Provinces, regarding the extent to which the provisions of Act IV. 1840, are applicable:

*Resolution of the Presidency Court of Nizamut Adawlut, under date the 21st October, 1842.*

*Present.*

R. H. Rattray, C. Tucker, and J. F. M. Reid, Esquires, Judges.

It having been brought to the notice of the Court that a Session Judge has over-ruled the proceedings of a Magistrate in which he held the provisions of Act IV. 1840 to be applicable to a case involving disputes for the possession of land between a landlord and putneedar, on the ground that by the rule laid down in Construction No. 579, of the 17th December, 1830, such cases could not be brought under Regulation 15 of 1824, and because he conceived the zemindar entitled to the privileges of an auction purchaser, and therefore entitled to oust the putneedar, they deem it proper to record the following Resolution explanatory of their construction of Act IV. of 1840, for the future guidance of the several Session Judges within their jurisdiction: *Resolution.* With reference to the very general terms of Act IV. of 1840, the Court are of opinion that its applicability cannot be confined within the narrow circle of Regulation XV. 1824, which has been repealed by the present law, by which it is evidently intended to empower the Magistrates to enquire into disputes relating to the possession of lands of which, before the passing of that enactment, they were not competent to take cognizance.—*Civ. Ord. 29th Dec. 1842.*

25. A Magistrate cannot refer suits under Regulation 15, 1824, [Act IV. of 1840,] to Sudder Ameens under Clause 6, Section 18, Regulation 5, 1831, those provisions applying to cases of a strictly criminal nature.—*Con. 689, West. C. 26th April, Cal. C. 18th May 1832.*

Suits under Act 4 of 1840 cannot be referred to sudder ameens.

26. In a dispute for chattels or other movable property, if the fact of illegal and forcible dispossession have been established, the Magistrate is competent to interfere : but not otherwise.—*Con. 1349, West. C. 1st, Cal. C. 29th July 1842.*

Case in which a magistrate may interfere in a dispute for chattels, or other movable property.

27. A., a ryot, asserting himself to be under engagements to B., an indigo planter, complains that C., another planter, who states that he made advances to A., is about forcibly to cut the crop. Held that A. being in possession, may deliver the disputed plant to either B. or C. and that the Magistrate under Act IV. 1840, may prohibit C. from attempting to take forcible possession ; C. having his remedy in the Civil court under Regulation 6, 1813, and Act X. 1836.—*Con. 1359, Cal. C. 5th Aug., West. C. 2d Sept. 1842.*

Application of Act 4 of 1840 to the case of a ryot who complains that while under engagements to one planter, another threatens forcibly to cut his crop

28. A Civil court cannot stay execution of an award under Act IV. 1810, pending the decision of a suit instituted to reverse it.—*Rep. Sum. Cases, 26th April 1847.*

A civil court cannot stay execution of an award under Act 4 of 1840, pending a suit to reverse it.

29. A single suit may be brought to reverse several awards under Act IV. 1840, involving the same grounds of action.—*Rep. Sum. Cases, 2d Aug. 1847.*

A single suit may be brought to reverse several awards under Act 4 of 1840

30. In deciding upon claims to property attached in execution of decrees of court, it is competent to the Civil courts to determine whether an award under Act IV 1840. adduced in proof of possession, be a decision in a *boni fide* or fictitious case.—*Rep. Sum Cases, 31st Jan. 1848.*

The civil courts may determine whether an award under Act 4 of 1840, be a decision, in a *boni fide*, or a fictitious case.

31. The purchaser of property sold in execution of a decree having been forcibly ejected, by the party complained against, within a month of obtaining possession under the orders of the Civil court, the Sudder dewanny adawlut held that the court could summarily interfere to uphold the possession of the purchaser —*Remarks.*—The dispossession in this instance took place within a month of obtaining possession from the court's officer. The spirit of the precedent is, not to limit the summary interference of the court to one month, but to authorize such interference when the dispossession is sufficiently recent to bring the case, as it were, under the head of "resistance of the court's process," regarding which the Judge, after hearing both sides, must exercise a sound discretion. —*Rep. Sum. Cases, 19th Aug. 1835, vol. 7, p. 9.*

The civil court can summarily interfere to uphold the possession of a purchaser of property sold in execution of a decree, who had been forcibly ejected, within a month of possession.



## A D D E N D A.

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175a. Whereas it was enacted, by Clause 3, Section 9, Regulation 23 of 1814 of the Bengal code, that in cases of misconduct and neglect of duty, which might not be of a Recapitulation of  
of 5, 23, 1814, see 9,  
nature to require the suspension or dismissal of a Moonsiff from his office, the Judge should be authorized to impose on the Moonsiff a fine not exceeding twenty rupees or an amount not that the order of the Judge in such case should be final. — *Act XII 1817, Sect. 1*

175b. And whereas by Section 67 of the said Regulation the provision above recited, was declared amongst other things to be applicable to the office of Sudder Amcens, as well as to that of Moonsiffs. — *Ibid. Sect. 2* Date of reg. 2  
1814, see 67

175c. And whereas the provision above recited is no longer adapted to Moonsiffs and Sudder Amcens, in the more elevated judicial position which they now occupy. — *Ibid. Sect. 3.* The provisions of  
these enactments are  
no longer applicable  
to S. A. or Moonsiffs

175d. It is therefore hereby enacted, that Clause 3, Section 9, Regulation 23 of 1814 and Section 67 of the said Regulation, so far as it declares the said clause to be applicable to Sudder Amcens, are repealed. — *Ibid. Sect. 4* The Judge will no  
longer be at liberty to  
fine a Moonsiff or S.  
A. for misconduct or  
neglect of duty

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223a. The Court are pleased to notify, that, under the orders of the Governor General in Council, No. 561, dated the 1st April 1848, the rules of the 24th July 1816, for regulating leave of absence to the uncovenanted servants of the Government, are to be considered as abrogated. — *Gen. Ord. 11th April 1848.* The rules of the 24th  
July, 1816, regarding  
leave of absence to  
the uncovenanted,  
abrogated

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380a. Circular order of the Nizamut Adawlat dated 10th December 1830 is no bar to the institution of a suit for the removal of a hait — *S. D. 1. 1st Rep. of Feb 1848.* Suits may be insti-  
tuted for the removal  
of a hait

Page 69

383a. Suits for profits, or rent of land, should be instituted in the zillah where the land is situated, rather than in that where the defendants reside — *Rep. Sum. Cases, 10th Feb 1849* Where suits for the  
profits or rents of land  
should be instituted

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392a. A suit for reversal of a sale of real property, made in execution of a decree of court, must be instituted in the district in which the property is situated. — *Rep. Sum. Cases, 7th March 1848.* Where suits to re-  
verse the sale of real  
property in execution  
of decrees must be in-  
stituted.

Case regarding the court in which a particular cause is to be instituted

392b. A., a resident of *Mynpooree*, makes advances of cash to B., of *Cawnpoor*, taking a bond and agreement to deliver a certain quantity of indigo produce at C., another factory of A.'s in *Furruckabad*, the bond being written and the advance made at A.'s permanent residence. Held that A. may sue B. for breach of contract, either in *Mynpooree* where the cause of action arose, or in *Cawnpoor* where B. resided at the time of instituting the suit. The failure of delivery in *Furruckabad* is not a circumstance, which, under the Regulations, would give jurisdiction to the court of that district.—*Con. 866, West. C. 14th, Cal. C. 28th Feb. 1834.*

Page 72.

A claim for property by inheritance, dismissed, because it should have been included in a former suit.

The judgment regarding a claim divided contrary to law, reversed

397a. Claim by inheritance dismissed under Circular No 29, dated 11th January, 1839, being for property which should have been included in a previous suit.—*S. D. A. Sel. Rep. 18th Jan. 1847, vol 7, p. 287.*

397b. A claim having been divided contrary to paragraph 1. Circular order, 11th January, 1839, the judgments given were reversed in consequence.—*S. D. A. Sel. Rep. 3d July 1847, vol 7, p. 350*

397c. *Vide also Con 1010, page 639, No. 301.*

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Civil courts cannot entertain suits for money allowances charged on estates before the decennial settlement.

129a. The Civil courts cannot entertain actions for the recovery of money allowances, granted as charges upon estates previous to the decennial settlement.—*Rep. Sum. Cases, 7th March 1848.*

Page 82.

Claim to lands sold at auction by the sheriff dismissed, on specific grounds.

153a. Claim by appellant to the possession of certain lands sold to him at auction by the Sheriff of Calcutta. Judgment against the claim, on proof that the lands were previously mortgaged and conditionally sold to respondent.—*S. D. A. Sel. Rep. 3d Oct. 1806, vol. 1, p. 167.*

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Course of procedure where another person claims the property of a public defaulter about to be sold

80a Property, belonging to a public defaulter, being attached and about to be sold, in satisfaction of the dues of Government, should another person claim that property, it is sufficient that previous to the sale a summary enquiry be made into the merits of the claim. A formal enquiry is not in the first instance necessary. But it is at the option of the claimant to institute, subsequently, a regular suit; and, if his title be proved, the sale will be void, and the property adjudged to him with costs.—*S. D. A. Sel. Rep. 27th Nov. 1815, vol. 2, p. 162.*

Page 129.

The nazir must enter into a penal obligation for the good behaviour of the peons under him

91a The civil Judges are hereby reminded that by Section 2, Regulation 12 of 1803, corresponding with Section 2, Regulation 13 of 1793, and Section 12, Regulation 5 of 1804, the nazir of every Civil court is required to enter into a penal obligation for the good behaviour of the peons under his control, and as it is probable that this rule may have been overlooked in the recent changes of the law regarding the entertainment of nazirs in the Moonsiffs' courts, the Court desire that steps may be at once taken to ascertain whether such is the case, and if so, to enforce the aforesaid provision of the law generally.—*Cir. Ord. 13th March 1848.*

Page 133.

Appeals lie to the S. D. A. from the orders of a judge dismissing a ministerial officer of his own, or of a lower, court.

122a. The two Courts have also ruled that the precedent \* at page 38 of part 2, volume 1. of the Summary Reports, is at variance with the provisions of Section 12, Act XXV. of 1837, and

\* Nulmadub Sircar, petitioner.

Circular orders Nos. 23 and 178, dated 5th September, 1838, and 25th February, 1842, respectively. The precedent, therefore, must be held as superceded, and it is hereby declared, that appeals lie to the Sudder dewanny adawlut from the orders of a zillah Judge dismissing a ministerial officer, whether of his own or of any of the subordinate courts.—*Cir. Ord. 21st March 1848.*

## Page 158.

273a. The Courts of Sudder dewanny adawlut, for the Lower and North Western Provinces having considered the present state of the law regarding the dismissal by zillah Judges of vakeels of their own and subordinate courts, are of opinion that since the enactment of Act I. 1846, the rule contained in Clause 2, Section 10, Regulation 27, 1814, must again be acted upon, which requires that the dismissal of a vakeel attached to a Zillah court or to that of a Principal Sudder or Sudder Ameen, must be reported for the confirmation of the Sudder dewanny adawlut, pending the receipt of whose orders he can only be suspended from practice. The same rule is also made applicable to the vakeels of the courts of Moonsiffs by Section 11 of the Act cited. Under this exposition of the law, so much of Circular order No. 43, dated 13th April, 1832, as regards the removal of vakeel, and Construction No. 846, must be considered as no longer in force.—*Cir. Ord. 21st March 1848.*

The dismissal of a vakeel of a zillah court or that of the P. S. A. or S. A. or Moonsiff, must be reported for confirmation to the S. D. A. pending whose orders he can only be suspended.

## Page 171.

355a. Costs (pleader's fees) adjudged at one-fourth—a mere petition in lieu of the answer not been held to include the requisite pleadings as per penultimate proviso of Clause 1 Section 31, Regulation 27, 1814.—*S. D. A. Sel. Rep. 16th June 1847.*

A mere petition in lieu of the answer not held to include the requisite pleadings in reg. 27, 1814, see 31, cl. 1.

## Page 173.

366, 367, 368 *In reference to these rules, it may be observed that, under Act I. 1846, special agents are not allowed to plead. They do not even present petitions on behalf of clients in the Sudder Court. All laws regarding the deposit of vakeel's fees have been abrogated; but the payment of fees by the party cast will as a matter of course be included in the general costs of suit.*

## Page 179

400a. *Vide above, Circular order 21st March 1848.*

401, 402, 403 *As Act I. 1846 repeals both Regulation 7, 1832, Section 11, and Regulation 23, 1814, Section 15, Clause 4, these three rules are in a great measure superceded.*

*Under the new system established by Act I. 1846, all arrangements between client and vakeel are private, and the vakeels will of course take whatever precaution they deem advisable to secure their fees.*

## Page 188

459a. The Court publish an extract (paragraph 10,) from the Report on the Administration of Civil Justice in the district of Meerut, during the year 1847, and request that the civil Judges will require the ameens employed in the sale of property to render monthly accounts of the sums realized by them, and to furnish security (malzamy) to the amount of their average receipts for three months.—*Cir. Ord. 27th April 1848.*

Ameens employed in selling property will render monthly accounts of the sums realized, & give malzamy

459b *As respects the ameens employed in the sale of property, in execution of decrees, it appears to me advisable that they should be directed to furnish monthly accounts of the sums*

*Idem*



realized by them; and that they should also give security to the amount of their average receipts for three months. At present, the only security they give is that for the personal appearance, and as no sum is specified in the bond, as demandable from the security, in the event of any malversation on the part of the ameen, the document is worth nothing. The form in question was introduced by my predecessor, Mr. Glyn. If amended, agreeably to my suggestion, it would be expedient to include these officers in the statement No. 9. Should this measure be adopted, the object of the Circular order, Sudder dewanny adawlut of the 13th January, 1837, will be fully attained.—*Extract paragraph 10 from the Report on the Administration of Civil Justice in the District of Meerut, during the year 1847.—Ibid.*

## Page 211.

Stamp required in a suit in reference to illegal cesses

522a. Government suing for recovery of penalty for exaction of illegal cesses under Section 11, Regulation 27, 1793, may petition on 5 anna stamp.—*Rep. Sum. Cases, 13th April 1847.*

Plaintiff cannot be nonsuited, for not including the whole of a claim in one plaint

32a. Omission to include the whole of a claim in one plaint does not necessarily subject the plaintiff to be nonsuited.—*Rep. Sum. Cases, 20th June 1842, p. 33.*

Parties bringing separate actions for the quota they are entitled to on a bond acquired by right of inheritance is not a splitting of the cause.

32b. In a case of debt on bond, the parties acquiring a right by inheritance thereto entered separate actions to recover the quota each was entitled to. Held that this was not a splitting of the cause of action. Circular order No. 29, 11th January, 1839.—*S. D. A. Sel. Rep. 18th Sept. 1847, vol. 7, p. 392.*

## Page 226

A mere application for leave to sue as a pauper is not a "preferring a claim" within the meaning of the rule of limitation laid down by Section 14, Regulation 3, 1793, see 14

60a. A mere application for permission to sue *in forma pauperis* is not a "preferring of a claim" within the meaning of the rule of limitation laid down by Section 14, Regulation 3, 1793.—*S. D. A. Sel. Rep. 30th Jan 1839, vol. 6, p. 8.*

The time a nonsuited case was pending in the courts must be deducted in calculating the period of limitation

60b. In calculating the period of limitation in the case of a claim once nonsuited, a deduction should be made of the time it was pending in the courts.—*S. D. A. Sel. Rep. 26th July 1847, vol. 7, p. 375.*

## Page 227

To what Con 813 has reference

68a. Construction No. 813 only refers to a miscellaneous application by a plaintiff preferring a claim, and not to the admission of a claim by a defendant.—*S. D. A. Sel. Rep. 16th Aug 1847, vol. 7, p. 343.*

Claim of a person against the son of his brother, for a share of an estate, dismissed, on proof of adverse possession for more than 12 years.

70a. On the claim of a person against the son of his brother for a share of an estate, it appearing that the defendant and his father had held adverse *bonâ fide* possession for more than twelve years, the claim was disallowed.—*S. D. A. Sel. Rep. 5th March 1810, vol. 1, p. 297.*

Case remanded because the plea of adverse possession for 20 years was not noticed

70b. A case was remanded, because no notice had been taken of defendant's plea of adverse possession of the lands for twenty years.—*S. D. A. Sel. Rep. 24th June 1847, vol. 7, p. 349.*

## Page 228.

Con 980 does not extend to claims under the general law of inheritance.

82a. Construction 980 cannot be extended to claims under the general law of inheritance.—*S. D. A. Sel. Rep. 25th March 1848.*

## Page 229.

86a. Special claims to the property of a deceased *Moslem* having been dismissed and the property declared divisible amongst his heirs; held that the claim of the heirs is not barred by the rule of limitation, as that period must be calculated from date of decision pronouncing their right to share in the property.—*S. D. A. Sel. Rep. 12th June 1847, vol 7, p. 316.*

Claim of heirs of a *Moslem*, to his property not barred by the law of *him*, from what date the period is to be calculated

## Page 231.

93a. A party, to be entitled to the benefits of the special rule of limitation, must, in the Court of first instance, specifically set forth the nature of the fraud, and distinctly plead for a hearing under Clause 2, Section 3, Regulation 2, 1805—*S. D. A. Sel. Rep. 30th Sept. 1847, vol. 7, p. 399.*

The nature of the fraud must be set forth, to give a party the benefits of the special rule of *him*

## Page 233.

104a. In 1795, a *surat* on the lands of A., in the province of Benares, was made over to the raja, the *zemindar*, to reimburse the amount of a theft committed on a traveller levied from him. In his suit brought for this purpose at the end of 33 years, A. recovers possession under a decree of the *Sudder dewanny adawlut*,—the rule of limitation being barred by Clause 4, Section 3, Regulation 2, 1805, and the presumption being that the raja had received more than his claim.—*S. D. A. Sel. Rep. 19th Sept. 1832, vol. 5, p. 236.*

Particular application of the law of *him*.

## Page 238

127a. According to the spirit of Sections 2 and 3, Regulation 13, 1808, when a person brings a suit for land or other immovable property, and also for money or other movable property, the aggregate amount of both descriptions of property is to be considered as the cause of action.—*S. D. A. Sel. Rep. 30th Aug. 1814, vol 2, p. 125.*

When one brings a suit for lands and for money, the aggregate amount of both is to be deemed the cause of action.

## Page 241.

145a. The estimate, in money, of a suit simply for re-admission to *caste*, is not an action to recover the amount at which it is laid. An order of nonsuit, by the lower court failing to draw the distinction between them, overruled by the *Sudder dewanny adawlut*—*S. D. A. Sel. Rep. 13th April 1847, vol 7, p. 298*

Valuation of a suit for re-admission to *caste*.

## Page 242

155a. A claim being considered undervalued, the plaintiff should be nonsuited without going into the merits of the case—*S. D. A. Sel. Rep. 8th March 1848.*

Plaintiff should be at once nonsuited, if the claim is undervalued

155b. A plaintiff undervaluing property according to his own data, must be nonsuited.—*Rep. Sum. Cases, 2d Oct. 1847.*

A plaintiff, undervaluing his suit according to his own data must be nonsuited.

## Page 247.

183a. An order of a *Zillah* court dismissing the suit of the petitioner,—who sued to recover property which had escheated to the Government on default of succession,—because the petitioner did not appeal from a summary order rejecting his claim, overruled as against the practice of the courts.—*Rep. Sum. Cases, 31st May 1841, p. 11.*

An order of a *zillah* court dismissing a suit because the petitioner did not appeal against a summary adverse decision, overruled

183b. When not otherwise specified, the era current in any particular district is to be presumed.—*Rep. Sum. Cases, 11th Jan. 1848*

The era current in any district is, generally, to be presumed.

The validity of a  
plaint not affected by  
the number of issues  
in defence.

183c. Held that the ground of action being one, a suit can be entertained, notwithstanding that distinct claims be set up by different defendants : in other words, the validity of a  
plaint is not affected by the number of issues in defence.—*S. D. A. Sel. Rep. 15th July 1847, vol. 7, p. 354.*

Two persons holding  
under separate  
farming engage-  
ments, separate por-  
tions of land in the  
same village, must  
sue separately

183d. Claims by two individuals for arrears of rent, each holding under separate farming  
engagements distinct portions of land in the same village, being preferred in one suit : order of  
nonsuit, as they should have sued separately.—*S. D. A. Sel. Rep. 12th Aug. 1847, vol. 7, p. 381.*

Page 249.

Course, when par-  
ties are included as  
defendants for frau-  
dulent purposes

191a. Course to be pursued when parties are included as defendants for fraudulent pur-  
poses —*S. D. A. Sel. Rep. 11th Aug 1847, vol. 7, p. 380.*

Page 254.

Proclamation in bar  
of alienation of prop-  
erty, *pendente lite*,  
illegal

218a. It is illegal to issue a proclamation in bar of alienation of property, *pendente lite*  
before requiring security from the defendant.—*Rep. Sum. Cases, 12th June 1848.*

Page 286.

No stamp to be re-  
turned where an or-  
der of nonsuit has  
been passed.

370a. The return of any portion of the stamp required for the plaint, in a case in which  
order of nonsuit has been passed, is unauthorized.—*Rep. Sum. Cases, 24th May 1842, p. 31.*



## SECTION XVIIa.

### *Undiscovered Defaults in the prosecution of Suits.*

Every default shall  
be held cured when  
the opposite party,  
passing over the de-  
fault, has taken any  
step in a suit or ap-  
peal, and when the  
court shall have pass-  
ed judgment in it.

370b Whereas inconvenience has resulted from the rule that the discovery of  
defaults in the prosecution of suits and appeals brought in any court of the East India  
Company, within the territories subject to the Presidencies of Bengal and Madras, invali-  
dates all proceedings in such suits and appeals which may have been had since the occur-  
rence of such default It is hereby enacted, that in the said courts every default of a  
plaintiff or appellant, in all suits or appeals now pending or hereafter to be brought, and  
in all suits which have been decided but are still open to appeal, shall be held to be cured  
whenever the opposite party, passing over the default, shall have taken any step in the  
suit or appeal, and whenever the court shall have passed judgment in the suit or appeal  
whether such opposite party shall or shall not have taken any such step.—*Act XVII.*  
1847

Page 289.

Documentary proofs  
must be filed and ob-  
jections of opposite  
parties to them ta-  
ken

385a. Documentary proofs should not merely be exhibited but actually filed with the re-  
cord, and objections of parties affected by them taken.—*S. D. A. Sel. Rep. 5th July 1847, vol.*  
*7, p. 351.*

Page 290.

Case in which bills

394a. A. and B. claim an estate under bills of sale from C. That of B is set aside, though

bearing an anterior date, the possession of the titles by A. and other circumstances, creating a strong presumption of fraud on the part of B. and C.—*S. D. A. Sel. Rep. 20th Jan. 1834, vol. 5, p. 341.* of sale were set aside from strong presumption of fraud.

401a. Doubts appearing to exist as to the propriety of evidence previously adduced in a nonsuited case, being received in a subsequent suit, the Courts of Sudder dewanny adawlut, for the Lower and North-Western Provinces, desire it to be understood, that depositions given in a nonsuited case shall be hereafter considered available as evidence in a subsequent suit, arising out of the same cause of action and between the same parties, provided that it shall always be discretionary with the presiding Judge, or optional with either party, to require the personal attendance of the former witnesses for re-examination, or of other witnesses in addition to them. —*Cir. Ord. 26th Nov. 1817.* Depositions given in a nonsuited case available as evidence in a subsequent suit, but the judge or parties may require the attendance of the witnesses.

401b. Neglect to produce evidence in a lower court is no bar to hearing of appeal on evidence filed prior to such neglect.

An appeal may be heard, on evidence filed prior to the neglect of bringing it in a lower court.

It is discretionary with a Judge to act on evidence rejected by his predecessor.

Judge may act on evidence rejected by his predecessor.

The record of another case may be referred to, but copies of the necessary papers and evidence should be taken from it, and filed with the case under investigation. —*S. D. A. Sel. Rep. 9th June 1847, vol. 7, p. 312.* The record of another case may be referred to.

401c. Evidence cannot be impeached by conclusions drawn merely from a general practice —*S. D. A. Sel. Rep. 26th June 1847, vol. 7, p. 349.* Evidence cannot be impeached by conclusions drawn from a general practice.

401d. Revenue sale, title as purchaser at, declared in a previous suit, is conclusive evidence of that right in subsequent actions between the same parties.—*S. D. A. Sel. Rep. 18th Sept. 1847, vol. 7, p. 393.* Title of purchaser in a revenue sale, conclusive evidence of right.

401e. To decide upon evidence given in a case in the Magistrate's court, when the viva voce testimony of the same persons is to be had, is irregular —*S. D. A. Sel. Rep. 23d Sept. 1847, vol. 7, p. 398.* It is irregular to decide on evidence taken in a magistrate's court when the viva voce testimony of the witnesses is available.

401f. Admission by one defendant is no valid reason for exonerating co-defendants from a claim established against them by evidence —*S. D. A. Sel. Rep. 14th June 1847, vol. 7, p. 339.* Admission by one defendant, no reason for exonerating others from a claim.

#### Page 291.

407a. Compliance with the motion of a defendant, without consent of plaintiff, discharging certain co-defendants, who were then converted into witnesses for the defence, held to vitiate the proceedings, which were quashed and case remanded to be decided as preferred —*S. D. A. Sel. Rep. 7th Aug. 1847, vol. 7, p. 37.* Discharging certain co-defendants without plaintiff's consent, who then became witnesses for the defence, illegal.

407b. Case remanded, as Court of first instance (Munsiff) had made some of the defendants witnesses in the cause.—*S. D. A. Sel. Rep. 11th Aug. 1847, vol. 7, p. 380.* Case remanded because defendants had been made witnesses.

#### Page 296.

436a. The mode of deciding by the oath of the plaintiff can only be resorted to with the consent of both parties to the suit.—*S. D. A. Sel. Rep. 2d Dec. 1840, vol. 6, p. 305.* When a case can be decided by the oath of a plaintiff.

427a. *Vide Circular order, 18th May 1846, pp. 352, 353.*

Page 306.

Powers of committing persons chargeable with perjury in cases pending before them, vested in P. S. A

483a. And it is hereby enacted, that the powers vested by Clause 2, Section 14, Regulation 17 of 1817 of the said code, in zillah and city Judges, of committing persons chargeable with perjury or subornation of perjury in cases pending before such Judges, are hereby vested in Principal Sudder Ameens in civil cases pending before them and the Principal Sudder Ameens and the Magistrates are hereby authorized and required to proceed in the manner in which the said Judges and Magistrates are authorized and required to proceed by the said clause.—*Act I. 1848, Sect. 3.*

Session judges may try persons committed by themselves as civil judges for perjury, or subornation.

483b. And it is hereby enacted, that it shall be competent to the session Judges to try persons committed by themselves as civil Judges under the provisions of the said clause for perjury or subornation of perjury, any law to the contrary notwithstanding.—*Ibid, Sect. 4.*

Comprehensive interpretation of the expression "civil courts."

483c. And it is hereby enacted, that for the purposes of this Act, the expression Civil courts shall be held to include all revenue officers acting judicially.—*Ibid, Sect. 5.*

Page 313.

When a judge sends a case of forgery or fraud to a magistrate and the magistrate commits, the judge may try the case

530a. The civil Judge sent to the Magistrate a case of forgery and fraud and subornation of the same, for filing or causing to be filed a *soolehnamah*, with instructions to commit if he deemed the evidence sufficient—the Magistrate did commit. The session Judge was informed that the course followed by him was the correct one, and he was competent as session Judge to enter upon the trial.—*Con. 1221, West. C. 31st May, Cal. C. 5th July 1839.*

Magistrates will not receive charges of forgery, &c. preferred by parties to a civil or criminal case, in respect of papers offered in evidence in such cases

535a. It is hereby enacted, that within the territories subject to the Presidency of Fort William in Bengal, except the local limits of the courts established by Her Majesty's Charter, the Magistrates of the several zillahs and cities shall not receive any charges of forgery, or of procuring or causing forgery, or of fraudulently issuing and publishing as true or otherwise fraudulently giving effect to, or attempting to give effect to false and fabricated deeds and papers, knowing the same to be false and fabricated, which may be preferred by parties to civil or criminal cases in respect to deeds and papers offered in evidence in such cases against the adverse parties to such cases, or other persons, except as provided in the next following section.—*Act I. 1848, Sect. 1.*

The court before whom the cause is pending will send the accused parties to the magistrate, with the evidence, and take recognizances from the witnesses.

535b. And it is hereby enacted, that in cases pending before any Civil or Criminal court (except the court of the Magistrate, or of any officer exercising the committing powers of a Magistrate,) in which there may appear to the court sufficient grounds, for sending for investigation to the Magistrate, a charge of any of the offences specified in Section 1 of this Act, the court shall send the party or parties accused, in custody, to the Magistrate, together with the evidence and documents relevant to the charge, and shall take a recognizance from each of the witnesses, who have given such evidence to appear before the Magistrate, who shall thereupon receive such charge and proceed with it in the usual

after determination : case remanded to be disposed of accordingly.—*S. D. A. Sel. Rep.* 11th Aug. 1847, vol. 7, p. 379.

## Page 336.

666a. A solehnameh, or deed of compromise, conveying right to certain lands, though silent as to the mesne profits, was held to imply a right to the latter also.—*S. D. A. Sel. Rep.* 14th June 1847, vol. 7, p. 341.

A solehnameh was held to imply a right to mesne profits.

## Page 338.

676a. A summary appeal does not lie against the order of costs in a decree of a regular suit.—*Rep. Sum. Cases* 22d March 1848.

No summary appeal lies against the order of costs in a regular suit.

683a. Costs in the lower courts remitted to a defendant, who had been charged with them there, although exonerated from plaintiff's claim : but costs of special appeal charged against him, as, under the circumstances, he should have applied to the lower appellate court for review of judgment.—*S. D. A. Sel. Rep.* 12th Feb. 1848.

Costs in a lower court remitted to defendant, but costs of special appeal charged against him for specific reasons.

683b. Decision annulled, as award of costs was out of proportion to the sum decreed, and no reason given for the same.—*S. D. A. Sel. Rep.* 13th July 1847, vol. 7, p. 353.

Decision annulled because the costs were disproportioned.

## Page 367.

844a. In a suit, cognizable by a Moonsiff, referred to a Principal Sudder Ameen under Section 5, Act XXV. 1837, that officer is not tied down by the restrictions imposed on Moonsiffs regarding *tulubana* for the service of process.—*Con.* 1362, *West. C.* 26th Aug., *Cal. C.* 9th Sept. 1842.

The tulubana rules for moonsiffs do not hold good when a suit cognizable by a moonsiff is referred to a P. S. A.

## Page 381.

925a. One of four arbitrators having died, the award of the three survivors not invalidated under the implied consent of the parties to abide by their decision.—*S. D. A. Sel. Rep.* 1th April 1849.

The death of one arbitrator does not vitiate the award of three others.

925b. Want of unanimity on the part of arbitrators is an insufficient reason for setting aside their award.—*S. D. A. Sel. Rep.* 8th April 1848.

Want of unanimity no reason for rejecting an award.

925c. Consent to arbitration, once formally given, cannot be withdrawn, on the mere avowal of one of the parties of unwillingness to abide by the award.—*Rep. Sum. Cases* 18th March 1848.

Consent to arbitration, once given, cannot be withdrawn.

## Page

954a. I am directed by the Court to transmit to you an extract (paragraph 14,) from the Report on the Administration of Civil Justice in the district of Futtchpore during the year 1847, communicated by the Western Court, and to request, that should the practice referred to therein exist in the Moonsiffs' courts in your district, you will order it to be discontinued.—*Extract Para. 14*—I found, from one or two appeals which had come before me, that the Moonsiffs were in the habit of giving copies of witnesses' depositions and other papers, bearing their signature and seal, to parties requiring them on plain paper; and these copies were received by the Moonsiffs in other cases pending before them, and, in calling on them for an explanation of the authority under which the practice prevailed, they quoted the Court's Circular letter, No. 58, of the 16th January, 1840, as entitling parties to obtain copies of papers, such as I have referred to, on plain paper, and to receive them as evidence. The Moonsiffs appeared to me to have misunderstood the meaning of the Circular letter, which only mentioned that copies of

Moonsiffs cannot give copies of the depositions of witnesses, and other papers, to be used in other cases, on plain paper.

final orders, in miscellaneous cases as well as all interlocutory orders, were to be granted on plain paper. They are the only exemptions named in that letter, nor can I discover, in Regulation 10 of 1829, that copies of depositions parties wish to file in support of their claims, are exempted from being written on stamped paper. The Moonsiffs, therefore, in allowing these papers, which were not written on the prescribed stamp, to be presented and received as evidence, acted, it seemed to me, contrary to Regulation last cited, and I, therefore, directed them to put a stop to the practice, and I now bring the subject before the court, that my order may be recalled should I be found to have taken an erroneous view of the law.—*Cir. Ord. 9th March 1818.*

Page 399.

Course to be pursued by public officers on the institution of actions against them for official acts

11a. The following orders of Government are published by authority, for the information of officers of the Government as to the course to be pursued on the institution of actions against them for acts done by them in their public capacity.—*Cir. Ord. S. D. and N. A. 12th May 1848.*

At present they are left to defray the expense of these prosecutions themselves and are reimbursed only when they appear to have conducted themselves legally and properly

11b. I am directed by the Right Honourable the Governor to acknowledge the receipt of your letter No. 583, of the 17th ultimo, in which you draw his lordship's attention to the position in which Magistrates and other officers of Government are placed, when actions are brought against them in courts of law for acts done in the discharge of their official duties in consequence of the system at present pursued of leaving them to defend themselves at their own expense in every case, and only reimbursing them after the conclusion of the trial, if from the facts then developed it should appear that they had conducted themselves legally and properly in the matters which occasioned the action.—*Letter from the Secretary to the Government of Bengal, to the Superintendent of Police, Lower Provinces, 12th April 1848, par. 1*

Those officers will in future be relieved from the necessity of advancing the funds required for their defence.

11c. After carefully considering the subject, his lordship has come to the conclusion, that it will be right that the officers of Government so situated should be relieved from the necessity, which must often press heavily upon their means, of advancing the funds required for defending themselves against actions which may often be prompted by malice or litigiousness.—*Ibid, par. 2*

When thus subject to a prosecution, the fact, with particulars, will be communicated to government who will advance the funds if the officer appears to have acted rightly

11d. With this view his lordship has determined, as the course to be pursued in such cases in future, that on the institution of any action against an officer of the Government for acts done in the discharge of his public duty, he should communicate the fact through the usual official channel, reporting all circumstances which may be necessary to enable the Government to arrive at a decision on the real merits of the case. If, on full examination into the case, and on a fair and reasonable interpretation of his proceedings, the officer shall appear to have acted rightly, he will be directed to take the necessary steps to defend himself, the Government advancing the funds necessary for that purpose, to be refunded after the issue of the action is known, in case the circumstances then brought to light should prove the officer to have acted improperly. If on the other hand, upon examination of his case by the Government his conduct shall appear to have been clearly wrong, he will be informed that the Government will not interfere, and that he must defend himself at his own charge.—*Ibid, par. 3.*

Advantages of this arrangement

11e. Under such a rule as this, his lordship conceives that public officers will not be led to feel that they can fall back on the Government for defence in every case, whether their conduct may have been right or wrong. They will be sensible that they can look for assistance

only when they may appear to have entirely deserved it, and therefore their sense of responsibility will remain as keen as heretofore.—*Letter from the Secretary to the Government of Bengal, to the Superintendent of Police, Lower Provinces, 12th April 1848, par. 1.*

11f. Regarding the case, which gave rise to your communication his lordship has been informed that the action against that officer has been nonsuited. — *Ibid, par. 5.*

Reference to the particular case which gave rise to this communication.

Page 400.

15a. With reference to the Circular No. 21, issued by the Sudder dewanny adawlut under date the 6th August, 1830, by which the mofussil courts are required to report whenever there may be a delay of more than six weeks in replying to references under Regulation 2 of 1814. I am directed by the Sudder Board of Revenue to request that, when a final return cannot be made to such references within the period in question, a proceeding may be transmitted to the court issuing the precept explaining the cause of the delay and stating when the final return will probably be submitted.—*Cir. Ord. S. Bd. Rev. 9th July 1847.*

Course of procedure when a final return cannot be made to the reference in six weeks.

Page 131.

171a. The petitioner, who was a convict in jail, undergoing a criminal sentence, was permitted to appeal *in forma pauperis*, under the provisions of Act XIX. of 1840, without personally attending. — *Rep. Sum. Cases, 30th May 1842, vol. 7, p. 32*

The petitioner, a convict in jail under a criminal sentence, permitted to appeal as a pauper without personal attendance

Page 435.

182a. The Court are pleased to prescribe the following forms for use under Act XXIII. 1840, in addition to those communicated with the Circular order, No. 115, of the 26th December, 1846.

Additional forms under Act 23, 1840.

#### NOTICE OF APPLICATION FOR LEAVE TO INSTITUTE A SUIT IN FORMA PAUPERIS

*In the Court of Dewanny Adawlut for the Zillah of 24-Pergunnahs.*

To ——— of ———, in the town of Calcutta

Whereas ——— has applied to be allowed to institute a suit against you in forma pauperis for the recovery of rupees ———, and the application has been transferred to the Principal Sudder Ameen of this district for enquiry into the pauperism of the applicant.—Take notice, therefore, that, on your appearing before the said Principal Sudder Ameen on the ——— day of ———, 1848, in person or by vakeel, you shall be permitted, under Clause 6, Section 5, Regulation 28 of 1814, to shew cause why the applicant should not be allowed to sue as a pauper, and you are hereby required to acknowledge the receipt of this notice

Given under my hand and the seal of this court, this ——— day of ———, 1848.

L. S.

A. B., Judge.

—*Cir. Ord. 9th June 1848.*

Page 439.

207a. With reference to the enclosed extracts from Report\* for 1845-46, submitted to Government, by the Superintendent and Remembrancer of Legal Affairs, and the orders† of Government dated the 19th instant (No. 390,) I am directed by the Sudder Board of Revenue to request that you will issue the necessary orders for the immediate discontinuance of the levy of the fees alluded to therein.—*Cir. Ord. S. Bd. Rev. 29th May 1847.*

Collectors forbidden to realize the fees of the nazir's peons in pauper suits

\* Para. 115

† Para. 2, in part.



Collectors forbidden to realize the fees of the nazir's peons in pauper suits.

207b. I have remarked in my letter to the Accountant General, that "the only pauper suits in which any legal expences are recoverable on account of Government over and above the stamp duty are those to which Government itself is a party." I am aware, I have said "that the Collectors are in the habit of realizing the fees of the nazir's peons in all cases; but it may be doubted, first, whether the practice is not opposed to Section 7, Regulation 28 of 1811, which declares that all processes shall be served through the chuprasnies of the court without any expence to the pauper, and secondly, whether sums due or realized on this account should be included in a statement intended to show only the amount leviable on account of Government." Since writing this, I have learned that these fees though realized under the heads of costs of process, do not go to the nazir of the Civil court, but are credited to Government \* As Government are at no expence on account of the issue of processes in those cases in which they are not themselves concerned, I conceive the practice only requires to be known to ensure an order for its abandonment—*Extract from the Report by the Supt and Remembrancer of Legal Affairs, par 115.*

\* The practice with regard to the realization and crediting of these fees appears to vary considerably in different Circulates, but this I understand to be the general rule.

Statement showing the number of Pauper Suits decided in the Civil Courts of Zillah \_\_\_\_\_ in the month of \_\_\_\_\_, with the amount of Stamp duty leviable on the amounts of the suits decided

By whom decided	Date of institution of suit	Number of the suit as per file, whether regular or appeal.	Name of sitters with their places of residence	Nature of the suit	When decided.	Substance of the order passed.	Amounts of suits decided.	Stamp duty leviable as per the Regulations.	Remarks.
Judge	10th May, 184	1231 Regular	Joy Beh Punia, Plaintiff, of Thana, near Kuching, Patna, Bihar. Defendant, Mrs. Jageswar K. S. D. D. on mortgage of Thana (in the name of Jageswar Punia, Patna, Bihar).	Loan of Rs. 212-13 A. S. L. on mortgage.	13th June, 184	Decreed with costs in favour of Plaintiff.	11,519-7-15	983-10-4	
P. S. A.	22d April, 184	1238 Appeal.	Rampura Bhatti, Defendant, of Thana, near Kuching, Patna, Bihar. Plaintiff, of Thana, near Kuching, Patna, Bihar.	Claim of Rs. 500-0-0 on mortgage of Thana, near Kuching, Patna, Bihar.	11th May, 184	Decreed with costs in favour of Plaintiff.	513-4-6	32-4-3	
S. A. ....	8th Jan, 184	521 Regular	Govind Lal Datt, Plaintiff, of Thana, near Kuching, Patna, Bihar. Defendant, of Thana, near Kuching, Patna, Bihar.	Recovery of Rs. 100-0-0 on mortgage of Thana, near Kuching, Patna, Bihar.	12th April, 184	Decreed with costs in favour of Plaintiff.	432-1-0	47-5-6	
Moonsiff Thana, Nabob-gunge.	7th Dec, 184	413 D.	Ram Mohan Tewari, Plaintiff, of Thana, near Kuching, Patna, Bihar. Defendant, of Thana, near Kuching, Patna, Bihar.	Loan on Thana, near Kuching, Patna, Bihar.	11th Ditto.	Do. with costs.	192-3-2	17-5-6	

C. D. Judge.

Zillah \_\_\_\_\_  
Dewan's Office  
The \_\_\_\_\_  
—On Oct 27 1840

## Page 450.

The burden of proof rests upon the person advancing a claim to lakhuraj land.

267a. A claim to hold land as *lakhuraj*, being of the nature of a special plea, proof of it rests with the party advancing it.—*S. D. A. Sel. Rep. 11th March 1848.*

## Page 457.

No deduction of time allowed, for obtaining a copy of the decision appealed against, which need not be filed

300a. It being unnecessary to file with an appeal to a zillah Judge, from a decision of a Collector under Section 30, Regulation 2 of 1819, copy of the decision appealed against, any deduction of time for such purpose, in calculating the period of appeal, is illegal.—*Rep. Sum. Cases, 20th Jun. 1848.*

## Page 483.

It is illegal for zemindars to delegate to commissioners appointed under Act I. of 1839, the powers and duties which they themselves should perform under sect 2 and 3, Reg. 7, 1799, and sect 13, reg. 5, 1812.

6a. The Commissioner of Bhaugulpore having attracted the attention of the Sudder Board of Revenue to some irregular practices of the zemindars of his division in connection with the provisions of Sections 2 and 3, Regulation 7 of 1799, and Section 13, Regulation 5 of 1812, have directed me to forward to you herewith a copy of that officer's communication (No. 518 of the 17th ultimo,) upon the subject, and of their reply thereto of this date, in order that the practices therein alluded to, if existing in your division, may be put a stop to.—*From the Commissioner of the 12th or Bhaugulpore Division to the Secretary to the Sudder Board of Revenue*—I have the honour to report for the information and orders of the Sudder Board of Revenue that it appears to be generally the practice in this division for zemindars and other land holders to delegate to the Commissioner appointed under Act I. of 1839, the duties and powers which pertain to *themselves* under Sections 2 and 3, Regulation 7 of 1799, and Section 13, Regulation 5 of 1812, that is, instead of serving defaulting tenants with the written demand prescribed by the last mentioned Regulation, and afterwards distraining the defaulting tenant's property through *their own agents*, they make formal application on eight anna stamped paper to the Commissioner appointed under Act I. of 1839, who thereupon deputes a peon on two annas a day to serve the demand and make the attachment, and when this is done another peon on two annas a day is appointed to give notice of the sale. In some instances the application is presented through a mookhtar, whose power of attorney is also written on an eight anna stamp. It appears to me that by this practice the tenants are burdened with an unnecessary and illegal charge; the aggregate of which in not a few instances may exceed the amount of the arrears, and thereby put it out of the defaulter's power to discharge the demand or furnish adequate security to contest its justness. I therefore solicit the instruction of the board regarding the prohibition of all such unauthorized charges in future.—*Reply of the Board.*—Having placed your letter, No. 518 of the 17th ultimo, before the Sudder Board of Revenue, I am directed to communicate, in reply, that the practices pointed out therein being clearly illegal, and open to the objection you notice, must at once be prohibited; and you are accordingly requested to take the necessary measures for putting a stop to them in your division which you might have done without referring to the board.—*Cor. Ord. S. Bd. Rev. 3d April 1846.*

## Page 489.

With whom rests the *onus probandi* of what has become of property illegally attached

26a. The *onus probandi* of what has become of property illegally attached, rests with the wrong doer.—*S. D. A. Sel. Rep. 6th Jan. 1848.*

## Page 493.

Only a person appointed under Act I. of 1839 can sell distrained property.

36a. To obviate the risk of misapprehension I am desired by the Sudder Board of Revenue to instruct you, with reference to their Circular, No. 8, dated the 20th of March last, that

reminders and other persons vested with the power of distraining for rent are not authorized themselves to sell distrained property or to employ any agency for that purpose excepting a person duly appointed under Act No. I. of 1839, and further, that the only real property which can be brought to sale in satisfaction of a summary decree for arrears of rent is the talook or other tenure from which the arrear is due; provided by the title deeds or established usage such tenure be transferable by sale or otherwise.\*—*Cir. Ord. S. Bd. Rev. 13th July 1846, par. 1.*

What real property can be sold in satisfaction of a summary decree for arrears.

Page 499.

59a. Individuals other than the alleged defaulter and his surety, who may lay claim to distrained property, are not entitled to the release of such property on security; nor can their claims be investigated, according to the provisions of Section 15, Regulation 5, 1812. Though the property of the defaulter have been sold from his inability to give security, he may have his summary action, but any claim by a third party must be investigated in a regular suit under Section 9, Regulation 7, 1799.—*Con. 348, 19th April 1822.*

Who are not entitled to the release of such property on security

Page 501.

70a. A complaint preferred by a *zemindar* on his *gomashita* against *ryots* for breach of attachment of crops, shall be tried in a summary manner.—*Con. 503, April 1829.*

A complaint against a ryot for breach of attachment of crops by a zemindar, is summary

Page 501.

81a. The lower courts dismissed a suit for enhanced rents, on the ground that the prior notice of demand per Section 9, Regulation 5, 1812, did not contain the previous jumma, nor the quantity of lands on which the increase was demandable; but as such particulars are not required to be stated, their decisions reversed, and case remanded.—*S. D. A. Sel. Rep. 31st Aug 1847, vol. 7, p. 348.*

It is not necessary to insert in the notice of demand under sect 9, reg 5, 1812, the previous jumma, or the quantity of land on which increase is demanded.

82a. Judgment of lower court reversed because it awarded enhanced rent without proof of prescribed notice under Sections 9 and 10, Regulation 5, 1812.—*S. D. A. Sel. Rep. 10th June 1847, vol. 7, p. 315.*

Enhanced rent cannot be awarded with proof of the prescribed notice

Page 506.

89a. In a suit by a *huwalahdar* to raise the rents of his *neem huwalahdars*, in consequence of his own *jumma* having been enhanced by the *talookdars*, the lower appellate court's decree for plaintiff, on the principle that the subordinate holders were liable to enhancement in the same proportion as their superior, was set aside; and the case remanded to be disposed of according to the rates paid in the *pargannah* by *neem huwalahdars* to *huwalahdars*.—*S. D. A. Sel. Rep. 5th Feb 1848.*

Decision of a suit between the huwalahdars and the neem huwalahdar

91a. The *onus probandi* of exemption from enhanced rates, claimed by a talookdar not of the nature specified in Section 51, Regulation 8, 1793, rests with him.—*S. D. A. Sel. Rep. 10th Aug. 1847, vol. 7, p. 378.*

The onus probandi of exemption from enhanced rent by a talookdar, not one of sect 51, Reg 8, 1793, rests with him.

Page 508.

97a. The notice prescribed in Section 5, Regulation 4, 1794, refers to the tender of ryot-tee, and not of talookdaree pottabs.—*S. D. A. Sel. Rep. 17th July 1847, vol. 7, p. 361*

What the notice in reg 4, 1794, sect 5, refers to

Page 509.

106a. Nor to prohibit actual proprietors of land granting without the sanction of Government or its officers, to any person, not being a British subject or a European, a

What lands the zemindars were in 1793 allowed to grant in perpetuity

\* Clause 7, Section 15, Regulation 7 of 1799, Clause 4, Section 18, Regulation 8, 1812.

lease or pottah for ground for any term of years, or in perpetuity, for the erection of dwelling houses or buildings for carrying on manufactures, or for gardens, or other purposes, and for offices for such houses or buildings.—*Reg. 44, 1793, Sect. 8.—Benares Reg. 50, 1795, Sect. 7.—Ced. and Cong. Prov. Reg. 47, 1803, Sect. 8.*

## Page 511.

The courts can interfere with a landlord as to the amount of rent he may demand from a tenant refusing to quit the premises.

117a. Held that the Civil courts can interfere with a landlord, as to the amount of rent which he may demand from a tenant refusing to quit premises, the possession of which the landlord has established his right to recover. Held that the amount of rent to be awarded in the shape of damages, on a tenant's refusing to quit, ought to depend on the degree of unreasonableness involved in the tenant's recusancy.—*S. D. A. Sel. Rep. 22d May 1844, vol. 7, p. 163.*

Where ryottee holdings have been habitually sold, the right to do so must be respected.

123a. Where ryottee holdings have been habitually sold under former landlords, such right of transfer must be respected by their successors, until cancelled by an action at law — *S. D. A. Sel. Rep. 5th June 1847, vol. 7, p. 311.*

Nonsuit of plaintiff suing for lands granted in farm to his servant.

123b. Plaintiff having sued for possession of certain lands, under a farming lease granted to his servant, was nonsuited.—*S. D. A. Sel. Rep. 6th April 1849.*

## Page 513.

The civil courts cannot receive a deposit of rent refused by the zemindar

131a. Application for permission to deposit in court rents which the proprietor of the land refused to receive, rejected. [The Court at large were of opinion that the zillah Judge's order was correct, as since the transfer of all summary proceedings in matters connected with rent from the Civil courts to the Collectors, it would be irregular in the former to receive deposits of the kind alluded to.]—*Rep. Sum. Cases, 16th April 1840, p. 30*

## Page 514.

Summary suits for rents of one period does not involve the abandonment of a claim for previous years

135a The fact of a party having sued summarily for the rents of one period, is no ground for concluding that he abandons his claim for balances of previous years, for which he cannot sue summarily.—*S. D. A. Sel. Rep. 24th June 1847, vol. 7, p. 318.*

What a farmer suing for arrears of rent, is bound to do

139a. What a farmer suing for arrears of rent at a certain rate is bound to do, his claim being disputed by the tenant.—*S. D. A. Sel. Rep. 29th Jan. 1848*

## Page 517.

Failure to bring a summary action for rent, does not bar the remedy by a regular suit

155a. Failure to bring a summary action to contest a demand of rent, does not bar the plaintiff from his remedy by a regular action.—*S. D. A. Sel. Rep. 7th March 1848.*

In what case the zemindars must be made a party to a suit

158a. A zemindar in whose estate lands, the lakhuraj title of which is disputed, are situated, should be made a party to the suit — *S. D. A. Sel. Rep. 15th July 1847, vol. 7, p. 353.*

## SECTION XVIIa

*Summary Suits for Arrears and Exactions of Rent—Execution of the Collector's Process within the Limits of the Supreme Court.*

## Page 521.

The office of a collector quoad the trial of summary suits for arrears and exactions

177a. It having been ruled that the office of a Collector, quoad the trial of summary suits for arrears or exactions of rent under Regulation 7 of 1799, as modified by Regulations 8 of 1831, and 9 of 1833, is to be considered a Court within the intent of the first section of Act

XXIII. of 1840, I am desired by the Sudder Board of Revenue to instruct you on the subject of the said Act as follows.—*Cir. Ord. S. Bd. Rev. 12th Aug. 1846, par. 1.*

of rent is a court within the intent of Act 23, 1840.

177b. Every process in a summary suit is to be forwarded in an envelope to the address of the Deputy Sheriff of Calcutta, either by dāk, or by the hands of a peon or other public officer, as may be most convenient, with a letter drawn up conformably to the annexed form marked A.—*Ibid, par. 2.*

Every process will be forwarded to the deputy sheriff of Calcutta with a letter.

177c. All subordinate revenue officers empowered to try summary suits will submit the processes of their courts in such suits, which may require execution under Act XXIII. of 1840, to the Collector, to be by him forwarded, in the prescribed manner to the Deputy Sheriff.—*Ibid, par. 3.*

All subordinate courts trying such suits will submit the process of their courts which require execution under act 23, 1840 to the collector to be forwarded.

177d. All processes are to be drawn up in the annexed forms, numbered 1 to 6, or agreeably to such other forms as may from time to time be circulated by the Sudder Board of Revenue.—*Ibid, par. 4.*

In what form processes will be drawn up.

177e. Collectors will be careful that the processes they forward are drawn up conformably to these rules.—*Ibid, par. 5.*

Idem.

177f. The party at whose requisition any witness may be summoned, must be prepared to pay to the witness such sum for his expenses as the Judges of Her Majesty's Supreme Court may consider reasonable and proper. *Ibid, par. 6.*

By whom the witnesses will be paid.

177g. Any money that it may be requisite to send to the Deputy Sheriff is to be forwarded by a bill on the General Treasury.—*Ibid, par. 7.*

How the money is to be remitted to the deputy sheriff.

A.

Form A

I beg leave to enclose you (here mention the description of process) which I request you will have the goodness to present to the Judges of Her Majesty's Supreme Court conformably to Act XXIII. of 1840

2d On your intimating to me the expenses of serving this process, the amount will be forwarded to you by bill on the General Treasury, and a person will attend hereafter (or a person accompanies this letter) to point out the parties.

Clause 3, Section 15, Regulation 7 of 1799.

Process No. 1.

No 1.—*Dastuk or Warrant for the Arrest of the Defendant.*

To Nuzzur Ali, Nazir of the Collector's Office for the District of Nuddcah.

Whereas Baboo Kalachand, of Santipore, has instituted a suit in this court against Sheik Goomance, of Durrumtollah, in the town of Calcutta, under the provisions of Regulation 7 of 1799, for the recovery of arrears of rent, to the amount of rupees 100, you are hereby authorized and commanded to arrest the said defendant, and unless he pay the above demand, together with all the costs of this process, within twenty-four hours from the service of the same, you will convey him to this court. Provided, however, that if the defendant shall, by a written application, request a longer period than twenty-four hours to adjust the demand against him and the plaintiff shall, by a written superscription or endorsement on such application, acquiesce therein, you will delay execution of this warrant accordingly, and whenever the plaintiff shall in writing, declare himself satisfied and desire the warrant to be withdrawn, you will im-

mediately withdraw the same on payment by the defendant of all costs of the process. In this fail not. Dated this 10th day of August, 1846.

(Signed) A. B., *Collector or Deputy Collector or Asst. or Uncor. Deputy Collector* (as the case may be.)

Amended form of  
No 1 and No 4

1774. I am directed by the Sudder Board of Revenue to instruct you, that the annexed amended forms of process in summary suits for rent, which have been approved by the Advocate General, are to be adopted in substitution of Nos 1 and 4 of the forms circulated with the Board's letter of the 12th August, 1846, No. 22—*Civ. Ord. S. Bd. Rev. 30th June 1848. par. 1.*

The more indulgent enactments on which the original form No 1 was drawn up, will be applied after arrest in execution of the process No 1, revised form.

1774. The more indulgent enactments contained in Clause 3, Section 15, Regulation 7 of 1799, as set forth in the original Form No 1, are to be applied by the Collector's officer after the arrest of the defendant by the Sheriff, in execution of the process.—*Ibid, par. 2.*

1774 Clause 3, Section 15, Regulation 7, 1799

*No. 1, Revised Form of Dastuk*

*To Nuzzur Ally, Nazir of the Collector's Office for the District of Nuddah.*

Whereas Baboo Kalachand, of Santipore, has instituted a suit in this court against Sheik Goomance, of Durruuntollah, in the town of Calcutta, under the provisions of Regulation 7 of 1799, for the recovery of arrears of rent to the amount of rupees 100, you are hereby authorized and commanded to require the said Sheik Goomance either to give you good and sufficient security in the sum of rupees ——— for his personal appearance before this court, or to deposit in your hands the said sum of rupees 100, together with the sum of rupees ——— as and for the costs of this process to be paid by you into this court, and in the event of the said Sheik Goomance failing to give such good and sufficient security, or to make such deposit as aforesaid, you are further authorized and commanded to take the said Sheik Goomance into custody and to bring him before this court.

Given under my hand and the seal of the Court this — day of ——— 181—.

(Signed) A. B., *Collector or Deputy Collector or Asst. or Uncor. Deputy Collector* (as the case may be.)

N. B. The security bond should be in the same form, mutatis mutandis, as that executed by way of bail bond for the appearance of a defendant in a regular suit.

Process No 2

Clause 3, Section 15, Regulation 8 of 1819.

*No. 2.—Proclamation for the Attendance of the Defendant.*

In the court of the Collector for the district of Nuddeah.

*To Sheik Goomance, of Durruuntollah, in the town of Calcutta.*

Whereas Baboo Kalachand, of Santipore, has instituted a suit against you in this court under the provisions of Regulation 7 of 1799, for the recovery of arrears of rent amounting to rupees 100, and whereas a warrant was duly issued for your arrest, and whereas it appears from the return of the Nazir (or from the return of the Deputy Sheriff of Calcutta,) that after diligent search you were not to be found, and that the said warrant could not therefore be executed upon you, according to the exigence thereof Proclamation is therefore hereby made, agreeably to Clause 3, Section 18, Regulation 8 of 1819, that this court, after fifteen days from

the date thereof, will proceed to a summary investigation of the above demand against you, and in case of your non-attendance, will pass judgment summarily upon the documents and proofs that may be exhibited by the plaintiff ex-parte.

Given under my hand and the seal of this Court, this 20th day of August, 1846.

(Signed) A. B., *Collector or Deputy Collector, &c as before.*

Section 4, Regulation 14 of 1824.

Process No 3

*No. 3 — Subpoena.*

In the Court of the Collector of the district of Nudda.

Baboo Kalachand, of Santipore, ... .. Plaintiff,  
*versus*

Sheik Goomanee, of Durruntollah, in the town of Calcutta, ... .. Defendant.  
*To Sheik Mungloo, of Durruntollah, in the town of Calcutta.*

Whereas your attendance is required to give evidence on behalf of the plaintiff (or of the defendant) in the above cause, you are hereby required personally to appear before this court on the 1st September, 1846, for that purpose.

Given under my hand and the seal of this Court, this 24th day of August, 1846

(Signed) A. B., *Collector or Deputy Collector, &c as before*

Section 4, Regulation 14 of 1824

Process No 4

*No 4 — Warrant for the Apprehension of a Witness.*

*To Nazzur Ali, Nazir of the Collector's Office for the District of Nudda.*

Whereas Sheik Mungloo, of Durruntollah, in the town of Calcutta, was duly subpoenaed on the 24th day of August, 1846, to give evidence on behalf of Baboo Kalachand, of Santipore, plaintiff, and whereas Sheik I doo, peedah, has declared to the due service of the said subpoena, and also that the sum of rupees ——— was tendered to the said Sheik Mungloo for his expenses, and whereas the said Sheik Mungloo has neglected and refused to appear according to the exigency of the subpoena, you are hereby authorized and commanded to apprehend the said Sheik Mungloo, and to produce him before this court. In this fail not. Dated this 15th day of September, 1846

(Signed) A. B., *Collector or Deputy Collector, &c as before*

Section 20, Regulation 8 of 1831.

Process No 5

*No 5 — Writ of Execution against the Person.*

*To Nazzur Ali, Nazir of the Collector's Office for the district of Nudda.*

Whereas in the suit instituted by Baboo Kalachand, of Santipore, plaintiff, against Sheik Goomanee, of Durruntollah, in the town of Calcutta, defendant, for the recovery of arrears of rent, the sum of rupees 100 has been adjudged to be due to the said plaintiff, with interest at twelve per cent per annum to the day of payment, which to this date amounts to rupees 10, and 15 rupees for costs of suit, amounting to rupees 125. (or, the sum of rupees 50, has been awarded to the said defendant as costs and damages), and whereas the said defendant (or the said plaintiff) has failed to liquidate the award against him, these are to command you to apprehend the said Sheik Goomanee, defendant, (or the said Baboo Kalachand, plaintiff,) and unless the said Sheik Goomanee (or the said Baboo Kalachand) shall forthwith pay to you



the said sum of rupees 125 (or the said sum of rupees 50) together with the costs of this process, to produce him before this court, to be dealt with according to law.

Given under my hand and the seal of this Court, this 15th day of September, 1846.

(Signed) A. B., *Collector or Deputy Collector, &c. as before.*

Process No. G.

Section 20, Regulation 8 of 1831.

No. G.—*Writ of Execution against the Effects.*

*To Nuzzur Ali, Nazir of the Collector's Office, for the District of Nudda.*

Whereas in the suit instituted by Baboo Kulachand, of Santipore, plaintiff, against Sheik Goomance, of Durrumtollah, in the town of Calcutta, defendant, for the recovery of arrears of rent, the sum of rupees 100 has been adjudged to be due to the said plaintiff, with interest at 12 per cent. per annum to the day of payment, which to this date amounts to rupees 10, and 15 rupees for costs of suit, amounting to rupees 125 (or the sum of rupees 50 has been awarded to the said defendant as costs and damages,) and whereas the said defendant (or the said plaintiff) has failed to liquidate the award against him, these are to command you to levy the said sum of rupees 125 (or the said sum of rupees 50,) together with the costs of this process, by distress and sale of the goods and chattels of the said Sheik Goomance, defendant (or the said Baboo Kulachand, plaintiff,) and you are hereby further commanded to certify to me what you shall do by virtue of this writ.

Given under my hand and the seal of this Court at Nudda, this 20th day of September, 1846.

(Signed) A. B., *Collector or Deputy Collector, &c. as before.*

Page 524.

Proof of occupancy of lands does not establish the correctness of a summary demand for rent

191a. Proof of occupancy of the lands in a regular suit, rent of which has been sued for summarily, is not sufficient to establish the correctness of the summary award.—*S. D. A. Sel. Rep. 23d May 1849.*

Page 525.

The power of bringing tenures to sale in satisfaction of summary awards for arrears of rent has been transferred to the collectors

196a. The Board desire me to take this opportunity of pointing out to you, with reference to the 3d paragraph of their Circular, No. 16, dated 19th June, 1831, that an application to the Dewanny adawlut is not now necessary for bringing tenures to sale in satisfaction of summary awards for arrears of rent which may have accrued thereon, the power of making such sales having been transferred to Collectors since the date of their abovementioned Circular, by Act VIII. of 1835.—*Cir. Ord. S. Bd. Rev. 13th July 1846, par. 2.*

Page 527.

An application to sue in *forma pauperis*, rejected, because not preferred in one year from the date of reg. 8, 1831.

213a. An application for permission to sue in *forma pauperis* to set aside a summary decree for rent passed prior to the enactment of Regulation 8, 1831, rejected in consequence of the application not having been preferred within one year from the date of the promulgation of that Regulation.—*Rep. Sum. Cases, 5th Oct. 1841, p. 18.*

Page 535.

Z. cannot cancel the grant of a portion of rent-free land to dig a tank for the benefit of a village.

243b. Held that under the circumstances a zemindar had not power to cancel the grant of a small specific portion of land rent-free, for the express purpose of digging a tank for the benefit of the village.—*S. D. A. Sel. Rep. 18th Aug. 1847, vol. 7, p. 384.*

Page 538.

Reg. 7, 1799, Sect 20, applicable to gomastahs and mohurrirs of indigo planters.

253a. The provisions of Section 20, Regulation 7, 1799, are applicable to the gomastahs and mohurrirs of indigo planters.—*Note on Con. 924, 2d Jan. 1835.*

## Page 548.

303a. An estate, only privately divided, is not exempt from attachment under Section 26, Regulation 5, 1812.—*Rep. Sum. Cases, 10th Jan. 1848.*

An estate only privately divided is not exempt from attachment under reg. 5, 1812.

## Page 549.

304a. Arrangements made by the proprietors of an estate, after its attachment according to Section 26, Regulation 5, 1812, and Regulation 5, 1827, are not binding upon the revenue authorities.—*Rep. Sum. Cases, 1st Feb. 1848.*

Arrangements by proprietors of land attached by reg. 5, 1812, and reg. 5, 1827, not binding.

305a. The Sudder Board of Revenue having reason to believe that Collectors hold portions of estates in attachment under Section 26, Regulation 5 of 1812, I am directed to instruct you that that law does not authorize, and Construction No 717 of the Sudder Court is opposed to, such attachments.—*Cur. Ord. S. Bd. Rev. 3d Aug. 1846, par. 1.*

Portions of estates not to be attached under reg. 5, 1812.

305b. You will therefore be pleased to direct the Collectors of your division in whose districts such attachments may exist, to address the Judge on the subject, pointing out their illegality and requesting that they may be withdrawn.—*Ibid, par. 2.*

Such attachments illegal and to be withdrawn.

305c. You will observe that in all cases of this description, where the Collector acts as the executive officer of the court, and is not a party concerned in the case, if he sees reason to object to any order of the judicial authorities, his proper course is, not to move the court by petition or through the Government Pleader as appears to be the present practice, but to address it by letter or proceeding, and if dissatisfied with the views held by the local courts, to refer the question, through the Judge, to the Sudder dewanny adawlut for decision.—*Ibid, par. 3.*

How the collector will act when he has reason to object to an order of the civil courts.

305d. The Civil courts are, however, competent to order the revenue authorities to attach a portion of an estate under the provisions of Clause 2, Section 5, Regulation 2 of 1806. This has been ruled (and the Board have no doubt correctly ruled) in a letter, No 1138, dated the 11th July, 1845, from the Register of the Sudder dewanny adawlut to the Judge of Cuttack, and in such cases of attachment the entire estate is exempted, under Section 10, Act I. of 1845, from sale for arrears of revenue until after the close of the year.—*Ibid, par. 4.*

But the civil courts may order a collector to attach a portion of an estate under reg. 2, 1806, sect. 5, cl. 2.

## Page 556.

327a. Balances of rent for antecedent years due from a *putnee talook*, being of the nature of personal debts of the *talookdar*, the talook itself is not primarily answerable for them.—*Rep. Sum. Cases, 31st Jan. 1848.*

The putnee talook not primarily answerable for balances of rent of antecedent years due from it.

## Page 568.

384a. Held that a putneedar can be summarily sued for arrears of rent.—*S. D. A. Sel. Rep. 30th May 1844, vol. 7, p. 171*

A putneedar may be summarily sued for rent.

384b. Under the general powers vested in a Collector by Section 22, Regulation 9, 1833, it is competent to him to reverse a sale of a putnee tenure by a Deputy Collector under Regulation 8, 1819.—*Rep. Sum. Cases, 25th March 1849.*

Collector may reverse a sale of a putnee tenure by a deputy collector.

## Page 576.

430a. The Court having observed that Registers of Deeds have, in some instances, merely put their initials to the certificate of registration, direct me to call your attention to the subject

Registers will sign their names in full to the certificates of registration.

and desire that you will inform the Registers that their full signature is indispensable to a registry, and that any neglect, or carelessness, in a matter of so great importance, will be noticed with severe reprehension.—*Cir. Ord 12th May 1848.*

Page 580.

Registration by persons who have had charge of the office of registers, without being duly appointed to it, are valid in law

444a. Whereas instances have occurred of persons exercising the office of Register of Deeds who have not been duly appointed, and whereas in some cases registration of deeds has been made on other than court days, that is, on days other than those on which the Zillah or City court has been open for business, and doubts may therefore arise as to whether the registration of any deed registered by such persons not duly appointed, or registered on other than a court day, is valid in law --It is, therefore, hereby enacted, that acts which may have been done in that capacity in any zillah, subject to the Presidency of Bengal, by persons who have had charge of the office of Register of Deeds without being duly appointed to the said office, shall be and shall be taken to have always been as valid in law as such acts would have been if the said persons had been duly appointed to have charge of the said office --*Act XVIII. 1817, Sect. 1*

Registrations which have been effected on any other than court days, were and are valid

144b. And it is enacted, that all acts which may have been done on other than court days by the Register of Deeds, or by the person having charge of the office without being duly appointed, in any zillah subject to the Presidency of Bengal, shall be and shall be taken to have always been as valid in law as such acts would have been if they had been done on a court day.-- *Ibid, Sect. 2*

Page 588

Remarks by the Court of Directors on the rules for registration more especially upon 1813, and Act I, 1845

176a. I am directed by the Court to transmit to you extracts from two despatches of the Honourable the Court of Directors, and to request a report on the measures which have been taken for making known the provisions of Act XIX. 1843, the system which has been adopted for keeping the registry books of deeds and making them available for reference by the people, and the effect, generally, with which the operation of that law, and of Act IV. 1845, has been attended.—*Cir. Ord 8th May 1846, par 1.*

Idem

176b. "It appears from the voluminous correspondence here referred to\* that the subject of the registration of deeds affecting the title of real property, has for several years past been under your consideration."—*Extract of a despatch from the Hon. the Court of Directors regarding various provisions for Registration.—Ibid, par. 2.*

Idem

176c. "A system of registry had prevailed throughout the provinces of the three Presidencies, but registered deeds did not take precedence of those of earlier date which were unregistered when the party registering had knowledge of the existence of such unregistered deeds; this had led to much perjury, forgery, and fraudulent concealment, and had materially affected the security of transactions connected with real property. At the Presidencies there had never been any registration of deeds."—*Ibid, par. 3.*

Idem

476d. "In the first draft of an Act on the subject, it was proposed that in each Presidency town, and in each zillah, or smaller district, an office should be established for the regis-

\* "Act I of 1843, for the amendment of the law concerning registration of written conveyances, &c within the Mofussil territories of the three Presidencies"—"Draft Act for the establishment in the islands of Bombay and Colaba of an office for the registration of certain writings."

tration of all deeds affecting the title to real property ; that, after a certain date to be fixed, every such deed should be void as against any other deed previously registered, and that this provision should not be affected as formerly by notice of any deed previously executed though not previously registered."—*Cir. Ord. 8th May 1846. par. 4.*

Remarks by the Court of D. on the rules for registration, more especially upon the operation of act 19, 1843, and act 4, 1845

476e. "On further consideration it was judged advisable that, for the present, the system of registration should not be extended to the Presidency towns and, also, that it should be confined to deeds of sale or gift and to mortgages, excluding from its operation decrees of court, and deeds for the temporary transfer of real property, wills and written authorities from husbands to their wives to adopt a son after the husband's decease. Act I. 1843 was passed accordingly."—*Ibid, par. 5.*

Idem

476f. "It was discovered however, that the intended limitations had not been observed in the terms in which that Act was framed, and that its provisions would have been applicable to other conveyances and instruments than those for the sale or gift of real property, or for mortgages on security of that nature. Act XIX. of 1843 has, therefore, been passed with provisions restricted to the objects you had in view."—*Ibid, par. 6.*

Idem

476g. "We trust that the utmost pains have been taken that the new law shall be fully known and understood by all parties liable to be affected by it. Deeds of sale, gift or mortgage, are seldom, we believe, drawn up in India, as in England, by professional persons who make it their business to be correctly informed what is required by law to render them effectual, and it would obviously be a great hardship to annul the titles by which property is held by parties, who, in acquiring it, acted with entire good faith and according to long and well established practice. In introducing an improved practice such a hardship may in some degree be inevitable ; but the degree will greatly depend upon the means adopted for the purpose of guarding against it."—*Ibid, par. 7.*

Idem

476h. "We trust also that enquiries have been set on foot with respect to the best and safest mode of keeping the registry of deeds, and of making it easily available for reference by persons having occasion to examine it. A distinct and accurate index will be indispensable. Each page of the register, as well as every erasure and interlineation, must be duly authenticated. The custody of such a record will need to be carefully provided for, so as to protect it both from fraud and from accident. We do not think that precautions of such a nature can be left to the judgment and experience of the several individuals composing a numerous body of public officers, spread all over India, and, unless they are well devised, uniform, and correctly observed, the new law may be attended with the greatest confusion and injustice."—*Ibid, par. 8.*

Idem

476i. "We desire that we may be apprized of the measures which have been adopted on both the points above explained, and also of the effect with which the operation of the new law may have been attended."—*Ibid, par. 9.*

Idem

476j. "We are by no means satisfied that the provisions of law recently introduced on this subject are not liable to produce the greatest confusion and injustice. Prior to the passing of Act I. of 1843, registered deeds took no precedence of unregistered deeds of earlier date, when the party registering was aware of the existence of such unregistered deeds. That Act gave them precedence in all cases. Owing to some error in framing the Act, it was amended by Act XIX. of 1843, with respect to which we took occasion to point out the necessity of

Idem

Remarks by the Court of D. on the rules for registration, more especially upon the operation of act 10, 1843 and act 4, 1843.

making its provisions fully known to those liable to be affected by it. We observed that deeds are seldom drawn up in India as they are in England by professional persons, and that it would be a great hardship to annul the titles by which property may have been transferred in perfect good faith and according to long and well established usage. We also remarked that the utmost pains would be requisite as to the mode of keeping the registry of deeds, and making it easily available for reference, and protecting it both from fraud and from accident. These precautions could not in our judgment, be safely left to the discretion and experience of the several individuals composing a numerous body of public officers spread all over India."—*Extract from Despatch, under date the 14th Jan. 1846.—Cir. Ord. 8th May 1846, par. 10.*

Item

476k. "The information on the foregoing points, furnished with your letter of the 28th June, No. 18, 1845, certainly is not such as to show that our apprehensions are unfounded."—*Ibid, par. 11.*

Item.

476l. "By Act IV of 1845, the passing of which is reported in your present letter, it is further enacted that deeds may be registered, in any 'registry office within the Presidency of Fort William in Bengal, whether such office be in the district where the property or any part thereof to which such deeds relate is situated or not.' This new provision will increase the liability of a fair title to property becoming void through some undiscovered act of registration, and makes it still more indispensably necessary that the registers should be easy of access to parties requiring to examine them, and should be effectually protected against fraud and accident. The subject so universally and essentially concerns the interests of the community, that we must again desire that the various points affecting it, which were stated in our letter of the 21st July, 1844, No. 17, above referred to, may be fully enquired into, and may receive your deliberate consideration."—*Ibid, par. 12.*

#### Page 593.

Claims to interest on balances of rent not affected by act 32, 1849.

38a. Act XXXII. of 1839 does not affect claims to interest on balances of rent.—*S. D. A. Sel. Rep. 23d March 1848.*

#### Page 601.

Enquiry into the amount of mesne profits may be postponed, till the decision of the suit.

90a. In a suit for real property with mesne profits, enquiry into the amount of the latter may be postponed till the decision of the suit.—*Rep. Sum. Cases, 3d Feb. 1848.*

Mesne profits cannot be awarded at a higher rate than was claimed.

94a. The award of mesne profits at a rate exceeding that originally claimed, reduced.—*S. D. A. Sel. Rep. 21st Aug. 1847, vol. 7, p. 387.*

#### Page 602.

No claim will lie against govt for wasilat on lands resumed, and then released.

95a. Held, that an action cannot be maintained against Government for wasilat in the case of rent-free lands legally resumed, but afterwards released from assessment by Government as a matter of favor.—*S. D. A. Sel. Rep. 6th May 1844, vol. 7, p. 159.*

#### Page 611.

Local custom cannot supersede the reckoning of the year of grace.

146a. The year of grace for redemption of mortgage must be reckoned as laid down by law; which no local custom can supersede.—*S. D. A. Sel. Rep. 19th June 1847, vol. 7, p. 346.*

#### Page 614.

Notice of foreclosure need not be issued to a purchaser of a mortgaged estate.

159a. In a suit between a purchaser and a prior mortgagee it was held that it was not necessary for the latter to issue his notice of foreclosure on the former though in possession.

of the land, as the law (Section 8, Regulation 17, 1806,) restricted its service on the 'mortgagor or his legal representative,' and purchaser being neither.—*S. D. A. Sel. Rep. 1st Sept. 1847, vol. 7, p. 390.*

159b. A mortgagor or conditional vendor is entitled to have an account from the mortgagee or conditional vendee for the period of his possession, before it can be ruled that his equity of redemption is barred.—*S. D. A. Sel. Rep. 13th April 1848.*

A mortgagor is entitled to an account from the mortgagee, before the equity of redemption is barred

#### Page 615.

162a. In a suit by the purchaser for possession of mortgaged property situated in the mofussil, sold publicly by the mortgagee after obtaining judgment in the Supreme Court on the mortgage bond, the claim was dismissed as founded upon a transaction opposed to the mofussil law of mortgage.—*S. D. A. Sel. Rep. 24th July 1847, vol. 7, p. 362.*

Claim by a purchaser, for possession of property sold on a judgment of the Supreme Court dismissed.

163a. It is believed that Construction 630, dated 11th March, 1831, has been generally considered to prohibit a Judge, from calling on the mortgagee to produce his deed of mortgage in the course of the miscellaneous proceedings, required by Section 8, Regulation 17 of 1806, to be held on an application for foreclosure. The Court, having been in communication with the Western Court of Sudder dewanny adawlut on the subject, deem it proper to notify that the majority of the two Courts have held, that under the terms of the enactment cited, a Judge is not precluded from satisfying himself, by requiring the production of the document, that the applicant for foreclosure is the receiver or holder of a deed of mortgage, and this view of the law is not at variance with the opinion expressed in Construction 630, which explains only "that it is not required by the Regulation that a copy of the deed of mortgage should be served on the mortgagor," but does not say, that the Judge is not at liberty to call for it in order to satisfy himself that the applicant is what he represents himself to be.—*Civ. Ord. 5th June 1848.*

The zillah judge may call for the deed of mortgage to satisfy himself of the identity of the applicant.

#### Page 619.

191a. A judgment between mortgagor and mortgagee, for foreclosure of a mortgage, is no bar to the execution of a decree held by a third party, with a prior lien upon the same property, if established.—*S. D. A. Sel. Rep. 12th Feb. 1848*

A judgment of foreclosure does not bar the execution of a decree of a third party who has a prior lien on the property

#### Page 623.

216a. The order of the court, on the nomination by zillah Judges of guardians under Regulation 1 of 1800, to be communicated in the terms of the subjoined form,\* and in the event of appeals being preferred under Section 7 of that enactment, the Judge presiding over the miscellaneous department is at full liberty to pass any orders he may deem proper without reference to the previous orders of one or more Judges of the court, unless he consider a reference to his colleagues to be called for.—*Resolution S. D. A. 12th Feb. 1841*

Mode in which the order of the S. D. A. on the nomination of guardians, will be communicated

#### Page 625.

226a. Between the mother and a brother of a minor, the former has the preferable right of guardianship under *shasters* and Regulation 1, 1800.—*S. D. A. Sel. Rep. 20th Sept. 1847, vol. 7, p. 395.*

A mother has a prior right to the guardianship over the brother.

\* FORM.—The Court, having had before them your letter No. —, of the —, direct me to inform you that they are not aware of any objection to the arrangement proposed by you, subject of course to the provisions of Section 7, Regulation 1, 1800.

The alleged guardianship, if disputed by another claimant, must be enquired into.

226b. The alleged guardianship of a minor, if disputed by another claimant to the office should be enquired into before passing judgment in a case, in which such minor and his guardian may be concerned.—*Rep. Sum. Cases, 22d March 1848.*

A guardian cannot be appointed to an alleged adopted minor whose adoption is disputed.

226c. A guardian cannot be appointed under Regulation I, 1800, to an alleged adopted minor, whose adoption is disputed. This, however, does not prevent an action by his friend to establish the minor's right.—*Rep. Sum. Cases, 17th July 1847.*

Page 627.

The period of minority is to be deducted under the law of limitation.

246a. Deduction was made of the period of minority\* of plaintiff, against whose claim the law of limitation was pleaded.—*S. D. A. Sel. Rep. 2d March 1848.*

Page 633.

A Col cannot exercise any judicial authority in cases of disputed succession to the estate of a deceased zemindar.

267a. A Collector cannot exercise any judicial authority in cases of disputed succession to the estate of a deceased zemindar. His duty is confined, on hearing that any person has succeeded by inheritance to the property of a *malgoonazee* estate or *lakhuraj* tenure, to institute such enquiry as may appear necessary to ascertain the truth of the alleged succession, and, if the same appear to have taken place, to make the necessary entries in the proper registers.—*Con. 1005, West. C. 19th May, Cal. C. 17th June 1836.*

Page 634.

274a. *Vide also Summary Cases, 11th December, 1846, given as No. 248, page 628.*

Page 635.

A title disputed on general grounds is of no avail against a general right of heirship.

281a. A title disputed on special grounds cannot summarily avail against the general right of heirship.—*Rep. Sum. Cases, 5th June 1848.*

Page 639.

Case of a summary claim against the son for the payment of the debts of his deceased mother.

297a. In a case of a summary claim against the son for the payment of the debts of his deceased mother, against whom a decree had been given, the decree-holder was, under the circumstances, referred to a regular suit to try the question of liability.—*Rep. Sum. Cases, 18th April 1842, p. 29.*

Liability of a son for his father's debts.

297b. The lower court having decided that a son was not liable for his father's debts for want of proof of succession to his property, when no such plea was urged, the Sudder dewanny adawlut overruled the judgment.—*S. D. A. Sel. Rep. 9th June 1847, vol. 7, p. 314.*

The claimant of an estate by inheritance need not include all claimants in one suit.

301a. The claimant of an estate, in right of inheritance is not required to include all debtors to it in one suit; nor should he be referred to a regular suit to prove his title, if it be contested by a party claiming on a specialty.—*Rep. Sum. Cases, 20th Jan. 1848.*

Where an objection to the representation is made on the ground of a special legal disability, there must be a regular action.

303a. An objection made to the representation by the legal heirs of a plaintiff who died *pendente lite*, on the ground of a special legal disability (having been born while the mother was afflicted with the elephantiasis,) overruled; and the objector referred to a regular action.—*Rep. Sum. Cases, 26th June 1835, p. 9.*

Con. 980 does not extend to claims under the general law of inheritance.

304a. Construction 980 cannot be extended to claims under the general law of inheritance.—*S. D. A. Sel. Rep. 28th March 1848.*

Page 641.

An action by one as friend or next of kin to devisees under

319a. Held that an action by a person as friend or next of kin to devisees under a will.

\* See case of Inaam Buksh Khan versus Nuwab Dilawur Jung.—*S. D. Reports, vol. 1, p. 192.*

one of the executors under the will being alive, is irregular, and dismissed accordingly.—*S. D. A. Sel. Rep.* 24th Nov. 1842, vol. 7, p. 119.

a will, the executor being alive, is irregular.

## Page 643.

326a The general rules for delivering possession under orders of court apply to cases under Act XIX. 1841.—*Rep. Sum. Cases*, 27th May 1848.

The general rules for delivering possession apply to cases under Act XIX. 1841. How conflicting claims to property under Act 19, 1841, are to be decided

326b. Conflicting claims to the property of a deceased person, under Act XIX. of 1841, must be decided by the courts, and possession given to the party having the best title.—*Rep. Sum. Cases*, 5th June 1848.

## Page 651.

365a. The personal attendance in court of the principal to execute the engagement on receipt of a certificate, under Act XX. 1841, is unnecessary.—*Rep. Sum. Cases*, 17th Jan 1848.

The personal attendance of the principal to execute the engagement under Act 20, 1841, is unnecessary

## Page 656.

401a. Entry of part payments in the commercial books of a debtor, produced in evidence by his heir, not admitted as sufficient proof.—*S. D. A. Sel. Rep.* 15th July 1808, vol. 1, p. 242.

Entry of part payment in the books of a debtor, not sufficient proof.

401b. Determined that entries in the books of a banker, unsupported by other proof, are not sufficient evidence to prove a debt.—*S. D. A. Sel. Rep.* 15th Sept. 1818, vol. 2, p. 271.

Entries in a banker's books not supported by other proof, not sufficient evidence.

401c. The account books of a banking house will be found to furnish good evidence of a debt, if the authenticity of the accounts is sworn to by the writer of them, or if their authenticity may be presumed by corresponding entries in the books of any other respectable house.—*S. D. A. Sel. Rep.* 1st Dec. 1824, vol. 3, p. 417.

Cases in which the account books, of a banking house will be considered good evidence of a debt.

403a. The principals in a trading concern were bound by the acts of their agents, though no written authority had been granted by the former formally accrediting the latter to the parties with whom they traded, in consequence of strong evidence connecting the principals and agents.—*S. D. A. Sel. Rep.* 27th April 1818.

Grounds upon which the principals in a trading concern were bound by the acts of their agents.

## Page 657.

412a. The transfer of a claim by sale, *pendente lite*, was held no bar to the adjudication of such claim.—*S. D. A. Sel. Rep.* 24th Nov. 1817, vol. 7, p. 413. [This transfer of the claim, formed the principal and eventually (all else being withdrawn) the only ground of appeal; the proceeding being considered to constitute what in English law is called *champerty*.]

The transfer of a claim by sale, *pendente lite*, no bar to the adjudication of such claim.

## Page 664.

467a. In an action brought to recover, from the sureties of a stamp mohurrir, a sum of money alleged to have been embezzled by him from the proceeds of the sale of stamped paper, the plea urged by one of the defendants, of fresh sureties having been obtained, subsequent to his undertaking, on account of his security being considered insufficient, does not entitle him to exemption from his original obligation, the security bond never having been cancelled.—*S. D. A. Sel. Rep.* 29th Aug. 1816, vol. 2, p. 195.

The acceptance of fresh sureties does not exempt the original surety from liability, if their security bond has never been cancelled.

## Page 665.

471a. The holder of a decree being put in possession of a property on security, the surety, on refunding, after reversal of the decree, mesne profits to the successful appellant, is exonerated from the demand of others entitled to share in them, but not parties to the suit.—*S. D. A. Sel. Rep.* 14th June 1847, vol. 7, p. 341.

Obligation of a surety of a decree-holder in reference to a decree which was reversed.



Right of pre-emption cannot be claimed previous to actual sale.

In a case of pre-emption the case must be tried according to the law of the dfts rather than that of the plff.

The rules and restrictions of the Mahomedan law applicable in cases of pre-emption.

Rule of procedure when, in a case in which the claim was founded on family usage, the claimant died during an appeal.

Case in which an action of damages for libel on an accusation of dacoity does not lie

Damages given for the aspersion of the character of a Chaplain in a petition filed in the court.

Illegal attachment of lands by the plff, exonerates dfts from demand for rent.

To what period a title founded on possession must be maintained against a claim of right.

Sale of joint undivided property by one partner, illegal.

An action does not lie for arrears of rent against a large portion of the inhabitants of a village, who have no mutual connection.

A claim for rent for lands included in another lease previously given, dismissed.

474a. A right of pre-emption cannot be claimed previous to actual sale.—*S. D. A. Sel. Rep. 22d April 1848.*

474b. Where the plaintiff, a Mussulman, claimed against Hindoo vendor and vendees of an aliquot part of an estate, the right of pre-emption founded on common tenancy, it was ruled by the Sudder dewanny adawlut, on general principles of equity, that the case should be tried with reference to the law of the defendants rather than that of the plaintiff.—*S. D. A. Sel. Rep. 9th July 1833, vol. 5, p. 299.*

474c. Held, that where the right of pre-emption among Hindoos is recognized on the ground of local custom, the rules and restrictions of the Mahomedan law are applicable to claims of that nature, as the right originates in the Mahomedan law.—*S. D. A. Sel. Rep. 25th July 1843, vol. 7, p. 129*

Page 667.

492a. Pending an appeal to the Sudder dewanny adawlut in a case in which the claim was founded on peculiar family usage, the claimant died, and a party stating himself to have the next best title to the property applied for permission to carry on the appeal. Application refused and the applicant referred to a separate action, as no decree could be passed in his favor, on the plaint of the party, who originally claimed under the special usage.—*S. D. A. Sel. Rep. 16th April 1839, vol. 6, p. 255.*

Page 668.

498a. Held that an action for damages for defamation did not lie against a party accusing another of dacoity, on which charge he was committed for trial by the Magistrate, but acquitted by the Session Judge.—*S. D. A. Sel. Rep. 27th May 1848.*

498b. In an action for damages preferred by plaintiff, a Chaplain on the establishment, against a party who had gratuitously aspersed his character in a petition filed in court, the Sudder dewanny adawlut confirmed the decree of the lower court, which awarded to the plaintiff damages to the amount of 1000 rupees.—*S. D. A. Sel. Rep. 5th Feb. 1848.*

Page 670.

510a. In a suit for arrears of rent, the defendants were exonerated from the demand, on the ground,—although not urged by them,—of illegal attachment of the lands by plaintiff.—*S. D. A. Sel. Rep. 11th March 1849.*

510b. A title founded upon possession should be maintained against a claim of right, until the latter be judicially established.—*S. D. A. Sel. Rep. 19th Feb. 1848.*

510c. Sale of joint undivided property situated in the district of Tirhoot by one partner without the consent of the rest, is illegal.—*S. D. A. Sel. Rep. 16th June 1842, vol. 7, p. 105.*

510d. Held that an action for arrears of rent against a large portion of the inhabitants of a village, who are in no wise connected with each other than as residents in the same village and are not joint tenants, is liable to be nonsuited.—*S. D. A. Sel. Rep. 25th Aug. 1842, vol. 7 p. 112.*

510e. A claim by zemindars for rents of land leased to the defendants dismissed, it appearing that the lands were included in another lease previously given by the lessors to another person.—*S. D. A. Sel. Rep. 1st May 1837, vol. 6, p. 161.*

510f. The late proprietor of an estate having sold the same without exception or reservation, his heir sues the vendee for the recovery of the compound or quantity of land immediately attached to the family dwelling of the late proprietor, on the ground that such land never constituted a part of the property transferred by the sale. The Sudder dewanny adawlut held that the proprietary right to the land was by the sale transferred to the vendee, but adjudged to the plaintiff the right of occupancy on the payment of a fair rent.—*S. D. A. Sel. Rep. 13th Aug. 1836, vol. 6, p. 98.*

Decision in an action for the compound, or land immediately attached to the family dwelling of a proprietor.

510g. A zemindar in Cuttack holding his estate under a five years' engagement, was dispossessed by the Collector during the last two years of his term, on the ground of oppression towards the tenantry, and of the engagements not having been sanctioned by the superior revenue authorities. In an action for the recovery of possession and mesne profits, the Sudder dewanny adawlut held that under the circumstances the Collector was not justified in ejecting the plaintiff, and awarded to him the mesne profits for the unexpired period of his engagement; but passed no order in regard to the possession, the term of the engagement having expired.—*S. D. A. Sel. Rep. 20th June 1837, vol. 6, p. 171.*

Illegal dispossession of a zemindar in Cuttack by the collector, reversed by the Sudder.

510h. It is not competent to a Zillah court, after the expiration of a zemindar's engagement to direct the Collector to restore him to possession, and to enter into engagements with him, though it may declare his prior right to a settlement on agreeing to the assessment and other terms fixed by the revenue authorities.—*Ibid.*

A zillah court cannot direct the collector to restore a zemindar to possession and make fresh engagements, when the last had expired.

510i. Distinct shareholders according to private partition within estates which are publicly joint and undivided, may sue for rent separately.—*S. D. A. Sel. Rep. 8th April 1848.*

Distinct shareholders of an estate, not legally divided, may sue for rent separately.

510j. A deed of sale of property for a specified consideration, although with the avowed object of enabling the seller to prosecute a claim at law, not invalidated thereby, nor, under certain circumstances, by the vendor not being in possession of it.—*S. D. A. Sel. Rep. 13th May 1849.*

Special case of the deed of sale of property for a specified consideration, not invalidated.

## SECTION XLIIa.

### *Julkur—Right of Fishery.*

510k. A river having changed its bed, the right of fishery in the old channel is preserved to the proprietor in the new stream.—*S. D. A. Sel. Rep. 11th Dec. 1807, vol. 1, p. 221.*

Right of fishing in a river which had changed its bed.

510l. A. holding the right of fishery in the branch of a river, having taken possession of a *jheel*, formed by the overflows on the adjacent lands of B., declared, on the suit of B., to have no right or interest in the *jheel*, it not being connected with the channel of the river, which had not altered.—*S. D. A. Sel. Rep. 5th Feb. 1808, vol. 1, p. 228.*

Right of fishing in a *jheel*.

510m. A. purchases, at a public sale by the Collector, the *julkur* of certain *jheels*. One of these becomes dry; and it is determined, that A.'s purchase of the *julkur* only, does not convey any property in the lands, which belong to the proprietor of the *jheel*.—*S. D. A. Sel. Rep. 13th March 1813, vol. 2, p. 51.*

The purchase of the *julkur* does not convey any property in the lands.

Page 671.

2a. An order by a Principal Sudder Ameen, dismissing a suit *after hearing* on the ground

Dismissal of a suit

by a P. S. A. after hearing, for want of jurisdiction, not appealable  
 1844.—*Rep. Sum. Cases*, 5th Oct. 1847.

## Page 673.

In an appeal from a judgment of nonsuit, the appellate court will determine the propriety of the order, not the merits of the case.

14a. In an appeal from a judgment of nonsuit, an appellate court should determine the propriety or otherwise of such an order and not decide upon the merits of the claim, which involves the assumption of original jurisdiction.—*S. D. A. Sel. Rep.* 19th Aug. 1847, vol. 7, p. 385.

Objections by a third party to his land being included in land the subject of a suit, must be preferred in a regular suit.

16a. Objections by a third party, to his lands being included, by an order of court, in lands the subject of a suit between two other parties, should be preferred in a regular appeal from the final decree, and not summarily as from an interlocutory order.—*Rep. Sum. Cases*, 24th April 1848.

## Page 681.

What the appellant should do where the records of a case are destroyed by fire.

67a. The original record of a case appealed had been destroyed by fire : what the appellate court should have done under the circumstances.—*S. D. A. Sel. Rep.* 19th Aug. 1847, vol. 7, p. 386.

Course to be pursued in an appeal from an *ex-parte* award, when the default has been explained

67b Course to be pursued by an appellate court in an appeal from an *ex-parte* award, when default has been explained or otherwise.—*S. D. A. Sel. Rep.* 22d Sept. 1847, vol. 7, p. 398.

An appellant's case must be decided on the record, when he rests it on the decisions of the lower court

75a. An appellant resting his case on the proceedings in the lower court, is entitled to have his appeal disposed of on the record.—*S. D. A. Sel. Rep.* 8th March 1848.

## Page 687.

Value of stamp in certain cases may be less in appeal than in the original plaint

107a. Value of stamp in certain cases may be less in appeal than for original plaint.—*S. D. A. Sel. Rep.* 24th June 1847, vol. 7, p. 347.

## Page 688.

Respondents unnecessarily filing replies must pay their own expenses

111a. Respondents unnecessarily filing separate replies to separate appeals, must pay their own expenses in regard to them.—*S. D. A. Sel. Rep.* 9th March 1848.

## Page 694.

An appellate court must give reasons for reversing the decision of a lower court.

145a. An appellate court is bound to assign reasons for reversing a lower court's judgment. *S. D. A. Sel. Rep.* 14th June 1847, vol. 7, p. 340.

## Page 699.

The grounds allowed by Act 16, 1845 to justify default, cannot be pleaded in appeal from an order of dismissal on default under Act 29, 1841.

169a. The grounds, which Act XVI. of 1845, admits in justification of default, cannot be pleaded in appeal from an order of dismissal on default under Act XXIX. of 1841.—*Rep. Sum. Cases*, 19th June 1848.

## SECTION XIa.

*Litigious Appeals.*

## Page 700.

Interest to be allowed on sums adjudged by the decree appealed from, if confirmed, and litigious appeals to be punished by fine.

181a. To prevent an abuse of the above rule, and the encouragement of litigious appeals, the Provincial courts of appeal in all cases wherein they may confirm the decree of a Zillah or City court, and the Sudder dewanny adawlut, in all cases wherein it may confirm the decree of a Provincial court, are to adjudge interest at the rate of one per cent.

per mensem on all sums, receivable by the respondent under the decree passed in his favor, from the date of such decree, and are authorized to punish appeals which may appear to them litigious, by a fine to Government, proportionate to the condition of the party; and the circumstances of the case.—*Reg. 13, 1796, Sect. 3.*

181b. On a reference from the Judge of Chittagong, it was held by the Calcutta Court, in concurrence with the Western Court, that it is not competent to a zillah Judge to impose a fine under the provisions of Section 3, Regulation 13, 1796, on the appellant in a miscellaneous case, the rule therein laid down not being applicable to such appeals.—*Con. 1138, 16th March 1838.* The rule does not apply to miscellaneous cases.

181c It is not competent to a zillah Judge to impose a fine on a party applying for a rehearing of an order passed in a miscellaneous case.—*Rep. Sum. Cases, 13th March 1843, p. 46.* Idem

181d. It is not competent to a zillah Judge to impose a fine under the provisions of Section 3, Regulation 13, 1796, on the appellant in a miscellaneous case. See Construction 1138.—*Rep. Sum. Cases, 5th July 1842, p. 33.* Idem

## Page 702.

191a. The order of a Principal Sudder Ameen, rejecting, by an endorsement on the petition of plaint, an original suit as not cognizable by him, in a case exceeding 5,000 rupees in value, is appealable to the zillah Judge, and not to the Sudder dewanny adawlut.—*Rep. Sum. Cases, 27th Dec. 1847.* The order of P. S. A. rejecting a case above 5,000 rs as not cognizable by him, is to be appealed to the Z. Judge and not to the S. D. A.

## Page 703.

## 197a. CERTIFICATE, No. 1.

Certificate No. 1.

Dewanny Adawlut, Zillah (or City) ———

———,

versus

Appellant,

———,

Respondent.

SIR,—I herewith certify a petition of appeal against a decision passed by Mr. \_\_\_\_\_ the Judge of this *zillah*, presented to this court in the abovementioned case, together with a \_\_\_\_\_ of the decree.

The decision was passed on the \_\_\_\_\_.

Copy of it applied for on the \_\_\_\_\_.

Stamped paper furnished on the \_\_\_\_\_.

Copy of the decree delivered or tendered on the \_\_\_\_\_.

Petition of appeal presented on the \_\_\_\_\_.

2. I further certify, that I consider the appeal to have been made within the period prescribed by the Regulations; and that the usual notice was issued on the \_\_\_\_\_ to the appellant, for his attendance in person, or by *vakeel*, in order to prosecute his appeal within the period prescribed by the Regulations.

3. The decree has (or has not) been carried into execution.

Given under my hand and the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_, 183—.

*Dewanny Adawlut,* }  
The \_\_\_\_\_ of \_\_\_\_\_ 183—. }

A. B.,  
Judge.

—*Cir. Ord. Cal. C. 24th Oct., West. C. 14th Nov. 1834.*

Certificate No. 2.

197b. CERTIFICATE, No. 2.

*Dewanny Adawlut, Zillah (or City) ———*

Appellant,

*versus*

Respondent.

*To the Register of the Court of Sudder Dewanny Adawlut.*

Sir,—With reference to my certificate dated the — day of —, 183—, submitted to the Court of Sudder dewanny adawlut in the abovementioned case, I herewith forward the original notice, and do hereby certify that it has been duly served on the appellant.

Given under my hand and seal of the court, this — day of —, 183—.

*Dewanny Adawlut,* }  
The — of — 180—. }

A. B.,  
Judge.

—Cir. Ord. Cal. C. 24th Oct., West. C. 14th Nov. 1834.

Page 716.

The pledge of the lands of the appellant in lieu of security not admissible

255a. In cases of appeal, the assignment or pledge of the lands of the appellant in lieu of security is inadmissible.—*Resolution S. D. A. 7th June 1836.*

Page 718.

By whom the notices prescribed by C. O. 31st Aug. 1838 are to be issued.

264a. In a case remanded on appeal, the Court should itself issue the notices prescribed by the Circular order, No. 19 of 31st August, 1838, and the penalty for default, under Act XXIX. 1841, in case of non-service of notice upon the respondent, cannot be inflicted upon the appellant, unless he has been specially directed by the Court to assist in the issue of the same.—*Rep. Sum. Cases, 9th Dec. 1847.*

Page 722.

The order of a court refusing to review its own judgment is not open to appeal.

283a. The order of a court, rejecting an application for review of its own judgment, is not open to appeal.—*Rep. Sum. Cases, 22d Nov. 1847.*

Page 725.

If an appeal from a lower court to the S. D. A. is struck off on default, the lower court may still apply to review its own judgment.

302a. An appeal to the Sudder dewanny adawlut from the judgment of a lower court which has been struck off on default, is no bar to such court applying for sanction to review its own judgment.—*Rep. Sum. Cases, 20th April 1841, p. 7.*

Page 734.

The boundaries mentioned in a decree indicate the identity of land of which possession is to be given.

26a. The boundaries mentioned in a decree, and not the exact quantity by subsequent measurement, indicate the identity of the lands, of which possession is to be given to a decree-holder.—*Rep. Sum. Cases, 19th June 1848.*

Page 737.

Case in which execution against several judgment debtors, jointly and severally, is not barred.

58a. The application of the holder of a decree against several judgment debtors to divide their liabilities according to shares being rejected, does not preclude execution being taken out against them all jointly and severally.—*Rep. Sum. Cases, 18th Jan. 1848*

When part of a claim is given in judgment, possession of the remainder, tho' it has devolved on the claimant as heir, cannot be given.

60a. Where part of claim is awarded in judgment, possession of the residue cannot be given in execution of the decree, although it should intermediately devolve on the claimant by a clear title.—*S. D. A. Sel. Rep. 29th March 1830, vol. 5, p. 21.*

## Page 738.

65a. A Civil court is competent, at the suit of one not a party to the former action, to set aside its own decree in it, if shewn to have been collusively obtained, see Construction 1299. Case in which a civil court can set aside its own decree.  
—*S. D. A. Sel. Rep. 7th Sept. 1847, vol. 7, p. 391.*

73a. The purchaser at a sale, in execution of a decree of court, of the rights and interests of a *putneedar*, has no just claim to land situated within the *putnee* talook, which had been granted by the zemindar rent-free to a third party, before the date of the execution of the *putnee* and of which the *putneedar* never had possession.—*S. D. A. Sel. Rep. 28th Jan. 1840, vol. 6, p. 281.* Limitation of the claims of the purchaser of the rights and interests of a *putneedar* in execution of a decree.

73b. In a suit brought by A. against B., C., and D., to recover a share of property acquired by trade while they were in partnership with his father, a judgment was given in favor of A. Execution having been sued out by the plaintiff, D. claims exemption from responsibility under the decree, on the plea that neither he nor his father had ever been in partnership with the father of A. This plea held to be inadmissible, no mention having been made at any former stage of the proceedings, of the circumstances which it recited.—*S. D. A. Sel. Rep. 19th Aug. 1816, vol. 2, p. 194.* Particular claim to exemption from responsibility under a decree declared inadmissible.

73c. Execution of a *zillah* decree stayed by the *Sudder dewanny adawlut*, in consequence of the lands forming the subject of litigation being undefined in the plaint and equally so in the decree.—*Rep. Sum. Cases, 28th March 1848.* Execution for a *zillah* decree stayed by the *S. D. A.* as the lands were undefined both in the plaint and in the decree.

## Page 742.

95a. A Judge having granted permission to decree-holder intending to purchase the property of his judgment debtor, to file his receipt, instead of paying the purchase money, is competent to withdraw such permission under altered circumstances shewn by the application of a party holding a decree against such decree-holder.—*Rep. Sum. Cases, 10th Jan. 1848.* The judge may, under altered circumstances, recal permission for a decree-holder, to file his receipt, instead of paying the purchase money.

## Page 744.

106a. The Court are pleased to direct that the bill of sale granted to auction purchasers of property sold in execution of decrees under Regulation 7, 1825, be drawn up in the following form and engrossed on stamped paper, of a value regulated by the amount of the purchase money, furnished for the purpose by the purchaser: I hereby certify that a public sale held on (date) under the provisions of Regulation 7, 1825, in satisfaction of a decree of (the Court) A. B., plaintiff or appellant, vs. C. D., defendant or respondent, dated the ——— E. P. has purchased the right and interest of ——— in ———; and that his purchase has taken effect from and since the abovementioned day of sale, viz. (here repeat the date.) (Sd) G. H., Moonsiff or as the case may be.—*Cir. Ord. 11th Jan. 1848.* Form of the bill of sale, given to auction purchasers, under reg. 7, 1825.

## Page 754.

155a. The provisions of Regulation 3 of 1818, are applicable only to state prisoners.—*Rep. Sum. Cases, 22d Feb. 1848.* Reg 3 of 1818 applicable only to state prisoners.

## Page 759.

187a. Objections to a sale in execution of a decree, founded on its having been previously satisfied, cannot be heard after such sale when held after due notice.—*Rep. Sum. Cases, 20th Jan. 1848.* Objections to a sale, in execution of a decree, that it has been previously satisfied, cannot be heard after the sale.

Claims to property sold in execution of a decree cannot be heard summarily, unless preferred before the sale.

Claim to a rateable share in assets obtained by a sale, preferred on the day of sale, rejected

Counter claims to proceeds of a sale, on the ground of a previous purchase of the decree-holders' rights cannot be heard summarily

The claimant must take out process of attachment before the sale, to be entitled to share in its proceeds.

The attaching decree-holder must be reimbursed his expenses before distribution.

In suits in which judgment is confessed, the claim must be proved as in cases decided *ex-parte*.

No decree for real property founded on confession of judgment, will bar the sale of rights and interests in such property in execution of a money decree

187*b*. Claims to property sold in satisfaction of a decree, if not advanced before the sale, cannot be entertained summarily merely because preferred within one month after it — *Rep. Sum. Cases, 12th June 1848.*

187*c*. A claim preferred only on day of sale, to a rateable share in assets realized by a sale of property, rejected under Circular order, No. 42, dated 26th January, 1844 — *Rep. Sum. Cases, 10th March 1847*

187*d*. Counter claims to proceeds of a sale, held in execution of a decree, founded on purchase of the rights of the original decree-holders, cannot be determined summarily. — *Rep. Sum. Cases, 3d Feb. 1848.*

#### Page 773.

261*a*. In modification of the rules contained in Constructions Nos. 935 and 1056, and in Circular order, No 42, dated Lower Provinces, 26th January, and Western Provinces, 15th February 1844, the Court of Sudder dewanny adawlut are pleased to prescribe, that to give a title to share in the proceeds of sale rateably, the claimant must take out "process of attachment" previous to the sale of the property. Further, they direct that, before any distribution of the assets, the attaching decree-holder shall be reimbursed from them, the charges which he has actually incurred — *Cir. Ord 25th Nov. 1847, par. 1.*

261*b*. With a view to defeat the purposes of those who collusively obtain decrees on confession of judgment, to the injury of bona fide decree-holders, the Court have resolved, Firstly, that in suits in which judgment is confessed, the claim must be proved, as in cases decided *ex-parte*. No decree shall therefore be given simply on the admission of the claim by the defendant without also proof of it by the plaintiff. Secondly, that no decree for real property founded on confession of judgment, shall be admitted to bar the sale of rights and interests in such property in execution of a money decree. At the time of sale, however, it shall be certified to purchasers that such a decree exists. — *Ibid, par 2.*

#### Page 778

292*a*. *Vide, also Reports of Summary Cases, 5th July, 1847, page 731*

#### Page 786.

Form to be used under Act 23, 1840

334*a*. The Court are pleased to prescribe the following form for use under Act XXIII 1840, in addition to those communicated with the Circular order, No. 145, of the 26th December 1846.

#### *Notice of application for the discharge of an Insolvent Debtor.*

In the Court of Dewanny Adawlut for the zillah of 24-Pargunnahs

\_\_\_\_\_,

Plaintiff or Appellant,

*versus*

\_\_\_\_\_,

Defendant or Respondent.

To \_\_\_\_\_ of \_\_\_\_\_, in the town of Calcutta.

Whereas \_\_\_\_\_, now in imprisonment in the jail of this district at your instance, in execution of the decree passed against him under date the \_\_\_\_\_, has applied for his discharge under the provisions of Section 11, Regulation 2 of 1806, take notice, therefore, that on your appearing in this court,\* in person or by vakool within \_\_\_\_\_ days from this day's date, you

\* Or before the Principal Sudder Amcen (as the case may be)

shall be permitted to offer your objections to the discharge of the above mentioned debtor, and you are hereby required to acknowledge the receipt of this notice.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 194—.

L. S.

A. B., Judge.

—Cir. Ord. 9th June 1848.

Page 787.

338a. A person not in confinement for the satisfaction of a decree of a Civil court, cannot obtain the benefit of the rule regarding insolvents in Section 11, Regulation 2 of 1806 —*Rep. Sum. Cases, 18th May 1839, p. 20*

A person not in confinement in satisfaction of a civil decree, cannot obtain the benefit of the Insolvent Act

Page 803.

54a This rule may be considered as superseded by Section 1, Act III. 1843.

Page 804.

58a Petitions to stay execution of decrees of lower courts, when they relate to cases not ready for hearing, or not distributed, to be laid before the Judge in charge of the miscellaneous department: and when they relate to cases distributed, to be laid before the proper Judges.—*Resolution S D. A. 6th Jan. 1843*

Disposal of petitions to stay execution of decrees of the lower courts.

60a. A return to be prepared agreeably to the annexed form\* in the Register's office every month, and circulated for the information of the Judges of the Court —*Ibid, 19th March 1841.*

Monthly return for the judges of the S D A

60b. Whenever a case may be sent back for revision, the Judge ordering the remand, to enter the necessary information in a lithographed statement of the above form, and transmit it to the Register.—*Ibid, 9th March 1841.*

Course to be pursued by the judge of the S D A when sending back a case for revision.

\* Return of the judgments in which injunctions have been issued by the Sudder dewanny adawlat to the lower courts to revise the cases agreeably to the provisions of clause 2, Section 2, Regulation 9, 1831, for the month \_\_\_\_\_ 184

Name of the Judge or Principal Sudder Ameen.	Judgment manifestly unjust.	Judgment at variance with the Regulations.	Judgment in opposition to the Hindu law	Judgment in opposition to the Mahomedan law	Judgment in opposition to any other law applicable to the case	Judgment passed without sufficient investigation	Judgment grounded on assumptions irrelevant or erroneous.	Total sent back for trial	Remarks



## Page 806.

Course of procedure when any instance of inconsistent or contradictory orders of a zillah or city judge is brought to the notice of a judge of the S. D. A.

72a. Whenever any instance of inconsistent or contradictory orders, passed by the same zillah or city Judge, may come to the notice of a Judge of the Sudder dewanny adawlut, of sufficient importance to demand enquiry, such Judge shall direct the Register to call upon the zillah Judge or other officer for such explanation of the irregularity as he may have to offer; and if on the receipt of the explanation, it be not considered satisfactory by the Judge who called for it, he will direct the Register to lay it before the court at large.—*Resolution S. D. A. 3d Oct. 1834.*

Course of procedure when a judge of the S. D. A. desires the opinion of his colleagues on a point of law or case of importance.

72b. When any Judge of the Sudder dewanny adawlut may desire to have the opinion of his colleagues, on any point of law, or in any case of importance, he shall draw up a statement of the case in English, and circulate the same to the other Judges, who will record their opinions thereon, and then return the papers to the referring Judge, who, after considering the same, will either dispose of the case according to the opinions of the majority, or will request two or more of his colleagues to sit with him on the bench; and, after having heard the point argued in the presence of the parties, the Court so formed will then finally decide the case. (*Partially superseded by Act II. 1843*)—*Ibid, 3d Dec. 1836.*

Course to be pursued when any judge wishes one or more judges to sit with him.

72c. When any Judge shall wish one or more Judges to sit with him in any case, he shall intimate his wish, by an English note, to the Register, who shall endorse on the note the name of the Judge to whom it may fall by rotation to sit with the Judge making the application, and forward it to such Judge. The two Judges shall then consult with each other regarding the day on which it may be convenient to them to sit together.—*Ibid, 5th Aug. 1842.*

## Page 808.

Course to be pursued when a special appeal has been applied for erroneously in cases in which a summary appeal is admissible.

79a. In cases in which a summary appeal is admissible under the provisions of Section 3, Regulation 26, 1814, such appeal may be admitted, although the appellant may erroneously or from other cause have applied for the admission of a special appeal on stamped paper of the prescribed value, and in such cases the stamp duty paid by the appellant on his petition shall be returned to him, with the exception of two rupees, the value of a proper stamp for a petition of summary appeal.—*Ibid, 25th Nov. 1831.*

Cases in which alone a summary appeal can be admitted.

79b. A summary appeal can be admitted *only* when the suit in the lower court has been dismissed or rejected on the ground of delay, informality, or other default without an investigation of its merits.—*Con. 805, 19th July 1833.*

## Page 909.

85a. *This is modified by Act III. 1843.*

Form of pleadings.

88a. With reference to Clause 2, Section 5, Regulation 26, 1814, all pleadings filed in the Court, are to be prepared according to the standard of the form annexed; \* any deviation from the same renders the party filing the pleading irregularly prepared liable to the penalties laid down in the section above cited.—*Resolution S. D. A. 29th May 1840.*

\* خداوندان سلامت

ورخواست اپیل عام عدالت دیوانی صدر مقام کلکتہ از طرف بذل الحسن خان و  
مسماة وزیرالنسا و ناظم خان و مسماة امامی خانم زوجہ اسد اللہ خان مدعیان اینکہ

## Page 810.

93a. *Vide also Circular order, 14th July, 1843, which will be found at page 679, Nos. 56, 57, 58.*

94a. On a petition of regular appeal being presented to the Sudder dewanny adawlut, or certified by a lower court it shall be immediately referred to the Judge conducting the miscellaneous business of the Court, and provided the petition be filed within the prescribed period, and written on the prescribed stamped paper, the cause will be at once entered on the regular file of the court and brought to a hearing in regular rotation.—*Resolution S. D. A. 17th June 1836.*

Course of procedure, when a petition of regular appeal has been presented.

94b. All cases ready for hearing, to be sent by the Judge conducting the miscellaneous business, to the Register, for division among the Judges.—*Ibid.*

Disposal of cases ready for hearing.

94c. The officer of the Judge who prepares the cases for hearing, to be instructed to put up in future, for reference to another Judge, merely the 'mojibat,' or grounds of appeal, the 'jowab mojibat,' or reply to the reasons of appeal, 'the vakalutnamahs' of the parties, and the exhibits that may have been filed in the Sudder court.—*Ibid, 28th May 1840.*

What papers the officer of the judge, who prepares the case for hearing, will put up for reference to another judge.

94d. If in any case of appeal the proceeding required by Section 10, Regulation 26, 1814, be not forthcoming in the record of the lower court, the Judge conducting the preliminary proceedings in cases of appeal to the Sudder dewanny adawlut is to call for it from the lower court; and if it appear that no such document has been drawn up, the Judge will bring the circumstance to the notice of the court at large at their English sittings.—*Ibid, 30th Oct. 1840.*

The proceeding required by reg. 26, 1814, sec. 10 to be called for, if it has not been prepared by the lower court.

94e. A roobukaree or proceeding of the annexed form\* to be put up with all cases ready for hearing, under the signature of the Judge who prepares the cases for hearing.—*Ibid, 14th May 1841.*

Form of roobukaree to be put up with cases ready for hearing.

\* رو بکاری مثل عدالت دیوانی صدر مقام کلکتہ کے بہ نشست  
مذکورہ کے واقع تاریخ سنہ ۱۸ عیسوی مطابق سنہ ۱۲۴۰

اپیلانٹ

رہبانڈنت

ملاحظہ سے کاغذات منتہی صدر کے معلوم ہوا کہ اپیلانٹ بالکل سترایت  
اپیل کا بجایا لایا اور تدابیر احضار رہبانڈنت مطابق قانون کے عمل میں آیا اور  
رویداد مقدم پہونچا واسطے بموجب فہرست منسلک منتہی کے یہ مقدم حسب  
سرشتہ مرتب اور قابل تقسیم ہی اسلئے حکم ہوا کہ کاغذات منتہی بذریعہ فہرست  
علینہ دستخطی اسجانب واسطے تقسیم حضور حاکمان اسعدالت کے صاحب  
رجہ شتر کے پاس بھیجا جاوے فقط

## Page 812.

Weekly statement of business to be furnished by the paish-kar.

110a. The paishkar of the several Judges to furnish the serishtadar of the court with a weekly statement of the business pending before each Judge.—*Resolution S. D. A. 17th June 1836.*

Judge will notify the want of fresh cases to the register.

110b. Whenever any Judge may require a fresh supply of causes, he will notify the same to the Register.—*Ibid.*

Course of procedure when a regular appeal is laid before the judge.

110c. The Judge before whom a regular appeal may be laid, will proceed to pass his order as to confirming the decision of the lower court, or for requiring the attendance of the opposite party, or for issuing an injunction for the revision of the decision of the court below, as he may deem proper \*—*Con 675. 16th Feb. 1832.*

Memorandum of suits or cases revised by the S. D. A.

110d. With a view to the preparation of the statement of appeals annually submitted to Government, it was directed that lithographed forms be laid before the Judges, and that the Judges be requested, when disposing of cases heard by them severally, to enter in these forms, the particulars indicated by the headings, and send the same to the Register. It is to be observed that the entries to be made will respect not only appeals which may be finally decided, but the forms should also be filled up by the Judges in recording their opinion in cases sent on for another voice. (*The latter clause superseded by Act II. 1843*)—*Resolution S. D. A. 14th Sept. 1840.*

## Page 813.

What mohurrirs, in the absence of their principals, are empowered to do.

123a. In modification of Resolution of 9th January, 1835, mohurrirs, nominated by vakeels under Resolution of 18th February, 1834, are permitted, in the absence of their principals, to file petitions and other documents and to sign the entry thereof in the books of the office, mentioning the names of the vakeels on whose behalf they do so.—*Ibid. 26th Dec. 1846.*

## Page 814

Rules regarding the language to be employed by pleaders in the S. D. A.

132a. The following rules were passed with reference to Section 5 of Act I. 1846, and the repeal of Regulation 12, 1833 :

1. When pleaders who understand the English language are employed by both parties to a suit, it shall be at the discretion of the Judge, before whom the case is pending, to direct that the oral pleading be conducted in that language.—*Ibid. 25th Sept. 1846.*

\* This rule has been temporarily suspended under a resolution of the 29th May, 1840. That the Judges of the Court do not avail themselves of the power vested in them by the provisions of Clause 2, Section 2, Regulation 3, 1834, until the existing arrears have been disposed of, and that every regular appeal preferred to the court be at once filed, the respondent summoned, and the record called for from the Zillah court.

† Memorandum of suits or cases revised by the Sudder dewanny adawlut, agreeably to the orders of Government, dated 20th December, 1836.

No. of appeal	Name of the deciding Judge	Name of the district	Proceedings either remarkably well or remarkably ill-conducted	Remarks by the revising Judge

2. When a party to a suit has once appointed a pleader who can plead in English, a change of pleaders by such party shall be no bar to the Judge, before whom the case is pending, permitting the pleader of the opposite party to plead in that language.—*Resolution S. D. A. 25th Sept. 1846.*

132b. A party wishing to conduct his own case in person, but unable to address the court in the Hindoostanee or Oordoo language, shall pay the expence of an interpreter through whom to address the Court.—*Ibid, 15th May 1840.*

A party, ignorant of Hindoostanee, wishing to conduct his own cause, will pay an interpreter.

132c. In the event, however, of such party making declaration in the form appended\* that he is unable to speak the Hindoostanee or Oordoo language, and that he cannot afford to pay the expence of an interpreter, the court shall then employ an interpreter duly sworn for the occasion; the expence of such interpreter being defrayed by the Government.—*Ibid.*

But if he make a declaration of his inability to pay one, the court may direct the expence to be defrayed by govt.

132d. Vakeels filing papers to note under their signature the number of erasures, alterations, &c., which occur therein, or otherwise it will be liable to rejection.—*Ibid, 17th April 1846.*

Vakeels will note the number of erasures and alterations in any paper they file.

132e. To allow vakeels to consult their clients and prepare their cases, no civil business will be taken up on Fridays.—*Ibid, 18th April 1846.*

No civil business to be taken on Friday.

132f. The Government pleader may depute a mohurrin to examine the petition book, in order to know when miscellaneous cases in which Government are concerned are likely to come on for hearing.—*Ibid, 29th May 1846*

Govt pleader may depute a mohurrin to examine the petition book

Page 816.

139a. A plea adduced in the Sudder dewanny adawlut, no mention having been made, in any former stage of the cause, of the circumstances which it recited, and no reason assigned why, if true, they had not been stated, was rejected as false on the face of it.—*S. D. A. Sd. Rep. 14th March 1803, vol. 1 p. 63.*

A plea adduced in the S. D. A. and not mentioned before, & no reason given for not mentioning it, rejected

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SECTION XIIIa

*Preparation and signing of the Orders of the Court.*

150a. The pushkar of each Judge shall prepare his chittah and submit it for signature to the Judge, within five days from the date on which the order may be passed.—*Resolution S. D. A. 19th June 1840.*

The pushkar to prepare the chittah and submit it to the judge

150b. In the event of the Judge being unable from any cause to sign the chittahs within ten days from the passing of the order, the pushkar shall endorse on the chittah the cause of its being unsigned, and the date on which it was ready for signature.—*Ibid.*

Course to be pursued if the judge do not sign it in 10 days.

150c. The paishkars shall be required to see that the mohurrins to whom the duty is assigned, prepare the copies of the chittahs that are to remain with the record, within seven days from the date on which the chittahs are signed by the Judges, and to be careful that the copies are signed and attached to the record within three days more.—*Ibid.*

Particular duties of the paishkar.

\* *Form of Declaration*—I, A. B., (appellant or respondent,) in the suit C. versus D., do hereby declare, that I am unable to plead my case in the Hindoostanee or Oordoo language, and further that I have not the means to pay the expence of an interpreter.

Course to be pursued if the Judge dies leaving orders or decrees unsigned.

150d. In the event of a Judge dying and leaving any orders or decrees unsigned, the following course is to be pursued under the special instructions of the Court :

With respect to unsigned chittahs, the Register will cause them to be signed by the paishkar of the deceased Judge, and then have them read over in the presence of the vakeels of the parties. He will question the vakeels if they acknowledge the orders therein written to be the orders verbally given in court by the deceased Judge. If they answer in the affirmative the Register will require them to sign chittahs, and will sign them himself. Should the vakeels object to the order, the Register will take a note of their objections, and lay the same before the Court.—*Resolution S. D. A. 9th Nov. 1838.*

How the chittahs are to be signed if one party only has a pleader.

150e. In cases in which only one party has a pleader, the chittahs (after examination has been made regarding the correctness of the orders as in the previous case,) will be signed by the paishkar and vakeel, and countersigned by the Register.—*Ibid.*

How the chittahs are to be signed when, after the passing of the orders, both parties have absented themselves.

150f. In cases in which, after the passing of the orders, both parties may have absented themselves, the chittahs will be signed by the paishkar and countersigned by the Register.—*Ibid, 28th Dec. 1838.*

What the judges are to insert on the face of the certificates.

150g. With respect to decrees and copies of roobukarces to be placed with records of cases, the Register will sign them after comparing them with the original chittahs signed by the deceased Judge.—*Ibid, 9th Nov. 1838.*

#### Page 821.

161a. [*To be added to the Rule.*] The zillah and city Judges are required to insert on the face of certificates, in addition to the number of the suit and the names of the parties, the number of the precept register of the Sudder Court.—*Cir. Ord. 6th Feb. 1835.*

Copies of English letters or explanation to be made

169a. With a view to guard against original letters being lost or mislaid, copies shall be made of English letters of explanation, regarding cases pending in the Court, which may be called for by precept or otherwise, and put up with the case, the originals being retained in the English office for reference.—*Resolution S. D. A. 12th Feb. 1841.*

#### Page 827.

Amendment of certificates admitting special appeals.

184a. Certificates admitting special appeals requiring amendment, to be amended by the deciding Judges.—*S. D. A. Sel. Rep. 18th Aug 1847, vol. 7, p. 381.*

Grounds of application for special appeal in miscellaneous cases

189a. Applications for special appeal in miscellaneous cases of the nature described in Section 22, Regulation 5, 1831, and Section 8, Act XXV. 1837, shall be admitted only for the trial of any point or points in the decisions of the lower courts that may be inconsistent with some law, or usage having the force of law, or some practice of the courts, or that may involve some question of law, usage, or practice, upon which there may be reasonable doubts; and every such application shall be accompanied by copies of the final orders previously passed in the case.—*Resolution S. D. A. 12th Dec. 1845.*

#### Page 828.

In appeals to the S. D. A. from the extra-regulation provinces stamps in law papers are dispensed with by order of govt

190a. Under the orders of Government, the rules of Section 17, Regulation 10, 1829, which require stamps to be used in all law papers, are dispensed with as regards appeals to the Sudder dewanny adawlut, from the decisions of the authorities in the extra-regulation pro-

vinces of Assam, Arracan, Tenasserim, Cachar, and Cossyah Hills, and all proceedings connected therewith.—*Resolution S. D. A. 22d May 1840.*

Page 829.

200a. Special appeals, after admission, to be sent to the Judge conducting the proceedings connected with the preparation of causes for hearing ; and, after completion of the preliminary steps, to be sent to the Register, and dealt with as regular appeals in regard to distribution among the Judges.—*Resolution S. D. A. 17th June 1836.*

Course to be pursued in the S. D. A. with special appeals after they are admitted.

200b Partics engaging pleaders to present applications for the admission of special appeal must distinctly state in their vakalutnamahs, whether the pleader is merely to make the preliminary application or to conduct the case to its final issue.—*Ibid, 25th Nov. 1842.*

What parties engaging pleaders for special appeals must state in their vakalutnamahs.

200c. A pleader shall be at liberty, in presenting a petition of special appeal, to select and specify in his certificate such of the grounds, urged in the said petition, as may appear to him fit to be pleaded, rejecting the others as irrelevant ; and the admissibility of the appeal shall be determined with reference to the grounds so specified, solely. But in the event of the petition being rejected, owing to the insufficiency of the grounds so selected and specified, no review of the order, rejecting such petition, shall be claimable or permissible on the plea that other grounds than those specified are alleged in the petition, and are in themselves sufficient to justify the admission of a special appeal.—*Ibid, 20th Nov. 1846.*

Course which the pleader is to pursue in presenting the petition of special appeal

Page 830.

211a. Application for a special appeal rejected, notwithstanding the illegality of the Judge's order appealed against, such illegality not affecting the final disposal of the case.—*Rep. Sum. Cases, 22d April 1848.*

Where the illegality of the judge's order appealed against, did not affect the disposal of the case, the petition of special appeal was rejected.

Page 831.

214a. The summary decision of a lower appellate court on a question of fact is not open to a special appeal.—*Rep. Sum. Cases, 19th June 1848.*

Summary decision of a lower appellate court on a question of fact not open to special appeal.

214b. The court are pleased to adopt the following constructive rules of practice : A plea urged upon the ground of mere informality or departure from the law of procedure in the lower courts, such informality or irregularity not affecting the decretal order is not a sufficient ground for the admission of a special appeal.—*Resolution S. D. A. 24th Dec. 1847, par. 1.*

Informality or departure from the law of procedure, not affecting the decretal order, no ground for special appeal.

214c. A plea on the ground of departure from law, usage or practice, affecting the decretal order, set forth in the petition applying for permission to prefer a special appeal, may be a good ground for the admission of such appeal, though the plea may not have been urged in the lower courts.—*Ibid, par. 2.*

A plea of departure from law, usage, or practice, affecting the decretal order, though not urged in the lower courts, a good ground for special appeal

214d. On the perusal of an application for special appeal, it is competent to the court, with reference to the circumstances of the case and the law which has been violated, to pass an order for the admission of a special appeal with reference to such law, although it may have been overlooked in the lower courts or in the petition of special appeal.—*Ibid, par. 3.*

The S. D. A. may admit a special appeal in reference to the circumstances of the case, and the law which has been violated, though overlooked in the lower courts or in the petition.

214e. The resolutions of the 20th November, 1846, and 16th July, 1847, are hereby rescinded.—*Ibid, par. 4.*

Rescinded resolutions.

Special appeal in  
*formâ pauperis*.

214f. A special appeal *in formâ pauperis*, having been admitted, contrary to Section 17, Regulation 28, 1814, by two Judges of the Sudder dewanny adawlut [Goad and Dorin] was quashed, on the proposition of one of them [Dorin] before whom the trial came on, adopted by a third Judge [J. Shakespear] in opposition to the opinion of the first admitting Judge [Goad.] A subsequent application to be permitted to appeal in the usual mode, was overruled, but not on its merits. Held, that on the enactment of Regulation 9, 1828, his special appeal *in formâ pauperis* is re-admissible on renewed oath of poverty, such rejection notwithstanding.—*S. D. A. Sel. Rep. 3d April 1832, vol. 5, p. 179.*

Particular case of  
special appeal.

214g. On the admission of a special appeal against a judgment of the Provincial court, for certain lands in favor of A. against B., a claim is set up by C., as a third party, founded in the absence of all original right on either side : the court did not judge it necessary to enter into the further claim, but contenting itself with deciding between the former parties, left C. the option of proceeding by a regular suit.—*S. D. A. Sel. Rep. 30th Dec. 1816, vol. 2, p. 219.*

Special reasons for  
upholding the judg-  
ment of the lower  
court in a case of  
special appeal.

214h. A judgment of the lower court founded on four distinct reasons, the last based on the facts of the case, will stand in special appeal irrespective of any opinion formed as to the first three reasons, such reasons not being in themselves sufficient to overrule the judgment.—*S. D. A. Sel. Rep. 1st Sept. 1847, vol. 7, p. 388.*

Particular grounds  
on which the S. D. A.  
admitted a special ap-  
peal, annulled the  
judgment of the low-  
er court, and remand-  
ed the case for re-  
trial

214i. The parties in a suit for real property having joined issue upon the question of right under the law and facts of the case, and the court of first instance having decided thereon, the appellate court reversed the judgment upon a point irrelevant to the issue. The Sudder dewanny adawlut admitted a special appeal, and, annulling the judgment of the appellate court, remanded the case for re-trial on its merits.—*S. D. A. Sel. Rep. 12th June 1847, vol. 7, p. 338.*

Special appeal dis-  
missed, as all defects  
in the proceedings of  
the lower court were  
held to be cured.

214j. On retrial and dismissal on its merits, upon an appeal irregularly admitted, of a case at first decided *ex-parte* in favour of plaintiff, the course adopted by him was held to have cured all defects in the proceedings of the lower court ; special appeal dismissed.—*S. D. A. Sel. Rep. 4th April 1848.*

On what stamp a  
second application  
for special appeal  
must be written.

219a. After a petition for a special appeal has been rejected, any second application for the same purpose must be written on stamped paper of the same value as the original petition.—*Resolution S. D. A. 4th March 1831.*

Rule regarding  
those who may per-  
sonally present an  
application for spe-  
cial appeal.

219b. A person who may personally present an application for a special appeal, may appoint a vakeel after the period for appealing : but such vakeel cannot endorse any opinion on the petition, nor argue any matter not stated therein.—*Ibid, 23d May 1845.*

#### Page 832.

Costs in special ap-  
peal charged against  
a defendant, though  
costs in the lower  
court remitted to him.

222a. Costs in the lower courts remitted to a defendant, who had been charged with them there, although exonerated from plaintiff's claim : but costs of special appeal charged against him, as, under the circumstances, he should have applied to the lower appellate court for review of judgment.—*S. D. A. Sel. Rep. 12th Feb. 1848.*

Stamped paper must  
be examined by the  
superintendent of  
stamps before the a-  
mount of stamp re-  
mitted is paid.

222b. Whenever the court shall, on the rejection of a petition of special appeal or review of judgment, or on sending a suit back to a Zillah or City court for further investigation direct a portion or the whole of the value of the stamped paper on which the petition was written, to be refunded to the party, the amount shall not be paid until the stamped paper has been examined by the Superintendent of Stamps.—*Resolution S. D. A. 30th May 1834.*

222c. As soon as practicable after an order for the refund of the value of stamped paper shall be passed, the Register shall forward the paper to the Superintendent for examination, with a certificate in the form annexed.\*—*Resolution S. D. A. 30th May 1834.* The register will forward the paper to the superintendent.

222d. On the return of the certificate by the Superintendent, provided no exception be taken to the stamped paper, the amount shall be paid to the party entitled to receive it from the treasury of the court.—*Ibid, 30th May 1834.* The amount will be paid on the return of the paper by the superintendent.

222e. In cases adjusted on razeenamah, certificates will be granted to the party entitled to the refund, as required by Article 10, Schedule B, Regulation 10 of 1829.—*Ibid.* Refund in cases of razeenamah.

222f. In the event of its coming to the knowledge of the court that the plaint in any suit has not been written on paper of the proper value, the court shall proceed, under Clause 1, Section 7, Regulation 26 of 1814, either nonsuiting the plaintiff should fraud be apparent, or permitting him to file a duplicate of the plaint, through the Judge or Principal Sudder Ameen, should no fraudulent intent be presumable.—*Ibid, 20th Aug. 1841.* Course to be pursued when the S. D. A. discovers the plaint to have been written on an improper stamp.

222g. If the latter course is determined on, the court shall return the plaint and the decree, retaining the case on the file, to the lower tribunal, for the purpose of having a duplicate plaint filed, and the necessary alteration made in the costs; and, on the return of the document, shall then proceed to dispose of the appeal on its merits.—*Ibid.* Idem

222h. In suits of the nature described in Clause 4 of the note to Article 8, Schedule B, Regulation 10, 1829, the objections of the defendant to the plaintiff's valuation of the property sued for, as well as any other objections relative to the value of the stamped paper on which the plaint is written, must be brought forward in his answer to the plaint, and no such objections can be urged as a matter of right by the defendant at a subsequent stage of the case, either in the court of original jurisdiction or in this Court; nor shall the question of inferior valuation of the property sued for, be triable by the court, except upon summary or regular appeal from the order of the inferior court on that particular point, in which case the court shall proceed agreeably to Clause 2, Section 7, Regulation 26. 1814, should no fraudulent intent be apparent.—*Ibid.* Objections to the valuation of the property must be brought forward in answer to the plaint.  
  
The question of inferior valuation not triable by the S. D. A. except upon a summary or regular appeal.

Page 835.

244a. The following rules compiled chiefly from previous constructions, were adopted by the Court in concurrence with the Western Court on the 31st December, 1841. Compilation of constructions regarding review of judgment

\* Court of Sudder dewanny adawlut Fort William

A B.—Appellant or petitioner,

versus

C. D.—Respondent

A petition { of appeal,  
of special appeal,  
of a review of judgment, } having been presented to the court in the above cause written on a sheet

of stamped paper, value ——— rupees, marked No. ——— of ——— endorsed

It was ordered on the ———, present ——— Judge, that of the

value of the stamp { the whole,  
one half,  
three fourths, } be returned to the appellant (or respondent) as the case may be

The stamped paper in question is herewith forwarded to the Superintendent of Stamps, who is requested to state whether the paper is authentic, and return the same with a certificate to that effect to

His obedient servant,

E F, Register

Certified that the abovementioned stamped paper is authentic

Stamp office,  
dated ———. )

G. H., Superintendent.



What papers must accompany the petition for review of judgment.

244b. All petitions for review of judgment to be accompanied by a copy of the order of which a review is applied for, or, if the prayer of the petitioner have before been rejected, with copies (in addition to the original order) of the order or orders rejecting the review.—*Resolution S. D. A. 13th Feb. 1835.*

Documents filed with the petition liable to stamp duty.

244c. Documents filed with applications for a review of judgment, under the provisions of Section 4, Regulation 26, 1814, to be considered as exhibits, and made liable, as such, to the rule contained in article 5, Schedule B, Regulation 10, 1829, in the same manner as if they had been entered or filed on the proceedings of the original suit, or when it was before the Court in appeal, whether regular or special.—*Con. 1058, 18th Nov. 1836.*

The grounds on which the petition is considered admissible must be endorsed on the petition.

244d. No petition of review shall be read unless there be endorsed thereon and signed by the party, or his vakeel, (or mooktar, duly authorized, under the provisions of Regulation 12 of 1833,\*) in the most concise terms, a statement of the grounds on which the review is considered to be admissible.—*Resolution S. D. A. 27th May 1836.*

The reasons will be numbered. Terms which the endorsement should be expressed.

244e. The reasons shall be numbered and the endorsement expressed nearly in the following terms :—

I, A. B., appellant (or vakeel on the part of the appellant) or respondent, consider this petition for a revision of the judgment passed by Mr. C. D., Judge of this Court, to be admissible for the following reasons :—

1st. Because the said Judge refused to admit upon the file a certain document, which I maintain to be good and legal evidence

2d. Because since the date of the decision passed by the said Judge, a deed of sale appended to this petition has been recovered by appellant, or respondent, as the case may be, from E. F., in whose hands it had been deposited, but who had evaded the process issued to enforce his attendance.—*Ibid.*

Petitions for review of orders, rejecting applications for a review of judgment.

244f. Petitions for review of orders rejecting applications for a review of judgment, provided they are presented within three calendar months from the delivery or tender of the decree appealed against, may be written on stamped paper of the value of two rupees; but if preferred after the expiration of that period, all such petitions must be written on stamped paper prescribed in Article 8, Schedule B, Regulation 10, 1829, with reference to the amount or value of the property adjudged against the party desiring the review, in like manner as if a regular appeal were preferred from such judgment, as required by Clause 1, Section 2, Regulation 2, 1825.—*Con. 842, 1st Nov. 1833.*

The rejection of a petition for a review or judgment by the judge who tried the case, is final.

244g. When in a case decided by a single Judge, the deciding Judge shall have rejected an application for a review of the judgment, his rejection is, to all intents and purposes, final, unless he himself shall see grounds, on a subsequent application, to admit a review, and it is not competent to any other Judge or Judges of the Court at any subsequent period to admit a review of the order rejecting the review.—*Con. 982, 16th Oct. 1835.*

Two concurring voices required to admit a review of judgment passed by a judge no longer attached to the court, or unable to hear it.

244h. Review of a judgment passed by a Judge or Judges who are no longer attached to the Court, or who are otherwise prevented by absence or other cause from hearing the application, not to be admitted, except by two concurring voices.—*Resolution S. D. A. 23d July 1841.*

Mode in which the

244i. The decision of former, or absent, Judges cannot be overruled, but by the concur-

ring voices of a greater number of Judges.—*Fuqeer Chund Mitr versus Sumboo Chunder Ghose, 16th August 1834.*

decision of former or absent judges can be overruled.

244j. The opinions of former, or absent, Judges recorded on the first decision, shall be taken into account in the final disposal of suit after admission of review of judgment. In the event of a Judge altering his own former judgment, such former judgment shall not be taken into calculation in the disposal of the case on the review.—*Resolution S. D. A. 31st Dec. 1841.*

The opinions of former, or absent judges to be taken into account in disposing of the case.

244k. In a case in which the Court of Sudder dewanny adawlut has rejected an application for a special appeal from the decision of a zillah Judge in appeal from the decision of a Principal Sudder Ameen, the Sudder dewanny adawlut may entertain an application from the zillah Judge under the circumstances stated in clause 2, Section 4, Regulation 26, 1814, for permission to review his judgment.—*Con. 1057, 11th Nov. 1837.*

When the S. D. A. has rejected a special appeal, it may, under particular circumstances, entertain an application from the zillah judge to review his judgment

244l. The foregoing rules will not of course affect the power of the court, under the provisions of Section 3, Regulation 2, 1825, in cases in which, with reference to the powers of a Judge of the court, the decree may appear on the face of it to be imperfect and irregular.—*Resolution S. D. A. 15th April 1842.*

These rules will not apply when the decree appears imperfect or irregular.

244m. The order of a single Judge on an application for a review of the judgment of a former Judge or Judges, (no application for review having been preferred, while such deciding Judge or Judges were attached to the Court,) rejecting the application, shall be final, and it shall not be competent to any other Judge or Judges of the court at any time to admit such review.—*Ibid.*

The order of a single judge rejecting an application to review the judgment of a former judge is final.

#### Page 837.

253a. In drawing out the final decrees of the Court of Sudder dewanny adawlut, comprising the former decrees of the lower courts, and the previously recorded opinions of the Judges of the Sudder dewanny adawlut, such decrees and opinions are to be transcribed in the language in which they are recorded.—*Resolution S. D. A. 3d Jan. 1840.*

Former decrees or opinions incorporated with the decrees of the S. D. A. must be transcribed in the language in which they are recorded.

253b. On the signature of the Judge being affixed to a decree (the copy on native paper,) the decree-nuvees is immediately to deliver it to the proper mohurrir for the purpose of being copied on English paper. The decree, on being copied, is to be immediately forwarded to the khurcha-nuvees or costs accountant; and the mohurrir mohafiz of the Judge is to send the papers of the case to the khurcha-nuvees at the same time.—*Ibid, 20th Nov. 1840.*

Course to be pursued after the judge has affixed his signature to a decree.

253c. Copies of decrees in cases in which Government is a party, to be transmitted to the Sudder Board of Revenue or other authority (as the case may be) without any English translation.—*Ibid, 1st Sept. 1837.*

Decrees of which copies must be transmitted to the S. B. of Revenue

253d. Two Judges of the Sudder dewanny adawlut having passed a decision in an appeal suit, one of the two quits the court; it is afterwards discovered that in adjudging interest, the rules laid down in Circular order, No. 171, of the 4th March, 1836, have not been observed, the remaining Judge is not competent of himself to correct the error in the decree, but must send on the case for another voice.—*Ibid, 26th April 1839.*

Amendment of an imperfect decree passed by two judges of the S. D. A.

253e. On the discovery of an evident mistake on the part of the roobukaree-nuvees (or officer entrusted with the duty of drawing up the decrees) in recording a proceeding of two Judges, one of whom has quitted the Court, the remaining Judge cannot singly correct such mistake unless it be a mere clerical error, and the case must be submitted to another Judge.—*Ibid.*

How a mistake committed by the roobukaree-nuvees in drawing up a decree, is to be corrected.

Description of orders which will be printed.

253f. With reference to the orders of Government No. 64, dated the 8th January last, the following descriptions of orders will be printed.

1. Decisions on regular and special appeals.
2. Certificates of special appeal, in which, after admission of the special appeal, the case is remanded for trial by the lower court
3. Reviews of the decisions of the Court, *i. e.* the final order passed in the case.—*Resolution S. D. A. 23th March 1845.*

Disposal of petitions to stay execution of decrees of lower courts.

253g. Petitions to stay execution of decrees of lower courts, when they relate to cases not ready for hearing, or not distributed, to be laid before the Judge in charge of the miscellaneous department; and when they relate to cases distributed, to be laid before the proper Judges — *Ibid, 6th Jan. 1843.*

Page 845.

An order of the S. D. A. refusing to admit a pauper appeal not appealable to the Privy Council.

284a. An order of the Sudder dewanny adawlut, refusing to admit an appeal in *forma pauperis*, is not appealable to the King in Council — *Con. 1097, West. C. 8th July, Cal. C. 1th Aug. 1837.*

What intimation is to be given to the parties when an appeal to the Privy Council is admitted.

287a. The Judge admitting an appeal to the Queen in Council after 1st January, 1846, to give intimation to the parties of the requirements of the 8th and 9th Victoria Cap. XXX. and the penalty which will attach to a non-observance of the same.—*Resolution S. D. A. 27th Feb. 1846.*

Page 846.

292a. *Vide Circular Order, 17th July, 1846, p. 253.*

Page 848.

Course which the S. D. A. will pursue on the receipt of such petition

303a. On receipt of such petition, &c., the Court will hold a proceeding intimating the same to the appellant's vakeel, or agent, and conditionally call upon him to furnish security in cash or Company's paper, within three months subsequent to the six months allowed for investigation of security.—*Cir. Ord. 19th May 1843.*

Course to be pursued if the objections are groundless, or valid

303b. Should the objections be groundless, the first security, if otherwise good, will be accepted; but if they are found valid, the conditional order for security will be confirmed — *Ibid.*

Page 849.

Amount of security to be demanded from appellants to the Privy Council

312a. With reference to the 8th and 9th Victoria Cap. XXX. the amount of security to be demanded from appellants to the Queen in Council for costs of respondents is fixed, for the present, at Rupees 10,000.—*Resolution S. D. A. 27th Feb. 1846.* [This supersedes the Rule of the 25th November, 1842.]

315a. *Vide Construction 659, page 715.*

Page 850.

Translation of documents in cases appealed to the Privy Council.

323a. In cases appealed to the Queen in Council it is necessary that a translation of every document be furnished, even though such document be an exact copy of a preceding one. In the event of a decree, roobukarce, or other proceeding, containing copy of a document before translated, it is necessary that a translation of the said document be furnished at full length in the proceeding.—*Resolution S. D. A. 16th July 1830.*

Second translations to be considered as new translations.

323b. Second translations are to be considered as new translations, and charged as such.—*Ibid.*

325a. The privilege of making the first copy of appeals to England not to be granted to newly engaged translators.—*Resolution S. D. A. 2d Dec. 1842.* Copies of appeals to England.

325b. Both the copies of the appeals to be made by the best section writers in the office. Idem.  
—*Ibid.*

## Page 854.

340a. The officer appointed to take the petitions delivered in the office for presentation to the court is required to take all petitions offered to him, noting on them any objection, on the ground of deviation from the Regulations regarding stamped paper, that may appear to him to exist, to their being received, filed, or admitted by the Court, who will decide as to the validity of such objection.—*Resolution S. D. A. 18th Nov. 1831.* Duty of the officer appointed to take the petitions delivered in the office for presentation.

340b. The officers of the Sudder dewanny adawlut are strictly prohibited exacting or receiving fees for presenting for authentication mooktarnamahs and vakalutnamahs.—*Ibid, 17th June 1836.* Officers of the S. D. A. prohibited receiving fees for authenticating mooktarnamahs, or vakalutnamahs.

340c. To admit of the early preparation of the Court's monthly statements of business, the Judges, paishkars, and the record-keeper in the miscellaneous department, are to furnish, respectively, in the first week of each month, the information required for filling up the civil and criminal statements.—*Ibid, 19th Nov. 1841.* Information to be furnished in the first week of each month by the judge's paishkar and the record-keeper in the miscellaneous department.

340d. The law officers of the Sudder dewanny adawlut are restrictly prohibited from giving unofficial legal opinions on any occasion whatever, without the knowledge and sanction of the court.—*Ibid, 6th June 1811.* Law officers of the S. D. A. cannot give unofficial legal opinions without the Court's knowledge.

340e. The law officers of the Sudder dewanny adawlut to be addressed by roobukaree and not by perwannah; and the roobukarees forwarded to them to bear the signature of the Register and the seal of the court.—*Ibid, 12th Feb. 1841.* How the law officers of the S. D. A. are to be addressed.

340f. A law officer absent from his station on leave shall suffer during the period of his absence a deduction of one half of his allowances.—*Court. Order, 9th Nov. 1841.* Deduction of salary during the absence of the law officers of the S. D. A.

340g. A law officer, however, shall not be subjected to any deductions from his salary if absent, on authority duly obtained, only for the period of the Dusserah and Mohurram vacation.—*Ibid.* But no deductions will be made during the Dusserah & Mohurram.

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350a. Applications for copies are to mention in words the number of documents of which transcripts are required: date to be inserted immediately after the list of papers.—*Cir. Ord. 7th April 1843.* What is to be mentioned in application for copies of documents.

350b. Copies of decisions, recorded in English, under Act XII. of 1843, to be given to parties, as copies of decrees are given.—*Resolution S. D. A. 6th Sept. 1844.* Copies of decisions under Act 12, 1843.

350c. Copies of deeds and other exhibits or papers, not being proceedings, accounts, statements, and the like, provided for by Article 3, Schedule B, Regulation 10, 1829, should, when made for record in the courts in lieu of originals returned to the parties, be written on plain paper.—*Cir. Ord. 2d Jan. 1835.* Documents of which copies may be made on plain paper.

350d. Copies of proceedings, accounts, &c. kept for record, when the originals are returned, must, agreeably to Circular order, No. 128, of 2d January, 1835, and Article 3, Schedule B, Regulation 10, 1829, be written on stamped paper.—*Resolution S. D. A. 11th July 1845.* Documents of which copies must be written on stamped paper.

When original or general powers of attorney are returnable to mooktars

350e. The originals of general powers of attorney are returnable to mooktars, on copies on plain paper being substituted for record.—*Resolution S. D. A. 13th March 1846.*

Copies of decrees, roobukarees, &c. will contain all the writing which may be on such papers.

350f. Copies of decrees, roobukarees, &c. for whatever purpose made, to contain all the writing which may be upon such papers, whether upon the face or on the back, in English or in the native languages.—*Ibid, 20th Nov. 1846.*

## SECTION XXVIA.

### *Precedents.*

Course to be pursued if a judge believes that any reported precedent should be overruled.

350g. If a Judge of the Court shall be of opinion that any reported precedent should be overruled, he shall record at length his reasons for such opinion, and submit the same for the judgment of the Court at large.—*Resolution S. D. A. 27th Aug. 1841.*

— and if contradictory reported precedents on the same point are discovered.

350h. If it shall be brought to the notice of a Judge of the Court in the course of a trial, that there are contradictory reported precedents on the same point, the Judge shall record a note to that effect, and bring the same to the notice of the Court at large.—*Ibid.*

How the court will proceed when any reference on the above subject is made to it.

350i. When any reference may be made to the Court under any of the preceding rules; the Court at large will record their opinions on the point submitted, or appoint any number of the Judges not less than three, to sit with the Judge making the reference, and hear the case out of which the reference has arisen. The Court thus formed, will decide whether, under the first rule, the former precedent shall be overruled, or, under the second rule, which of the precedents shall be adopted as a guide to the future practice of the Court. In the event of an equality in the number of voices, the case shall be referred to a fifth Judge, whose decision shall be final.—*Ibid.*

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When an order is prepared in accordance with the sentiments of the majority of the judges, it is to be communicated as the order of "the Court."

363a. In reply to references from the subordinate functionaries on points of law, practice &c. (one or more Judges being dissentient.) the order, prepared in accordance with the sentiments of the majority, is to be communicated as the order of "the Court," and the draft countersigned by the dissentient Judge or Judges.—*Ibid, 6th Nov. 1846.*

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